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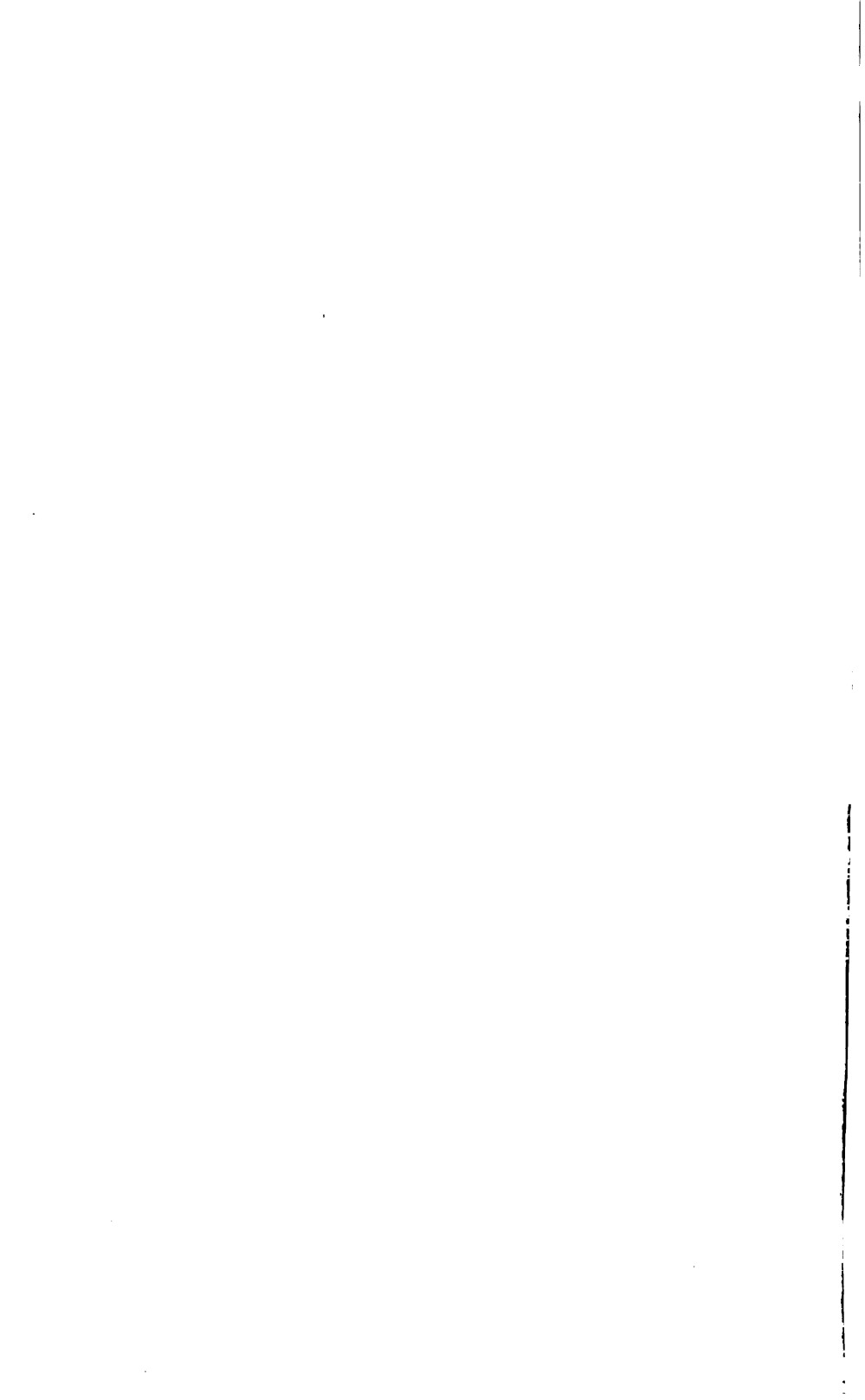
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**History and Analysis**  
of the  
**Commission and City-Manager Plans**  
of  
**Municipal Government in the United States**

by  
**TSO-SHUEN CHANG**

SUBMITTED TO THE FACULTY OF THE GRADUATE COLLEGE OF THE STATE  
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## AUTHOR'S PREFACE

The purpose of this monograph is three-fold. In the first place, the writer aims to trace the origin and development of the commission plan and the city manager plan—the two latest forms of municipal government in America—with a view to ascertaining the defects of the older forms of city government and the conditions which have led to a nation-wide movement for the re-organization of city government.

In the second place, the writer attempts to explain, through a detailed analysis of statutes and charters, the structure of municipal government under the new régime, and to show wherein the new plans have departed from the older forms of city government in the United States.

Finally, the writer endeavors to discover the extent to which the alleged advantages of the new plans have been sustained in actual experience. His studies reveal the fact that the published claims of achievement under the new plans have almost without exception emanated from officials in charge of the government. An accurate estimate of the actual success of the commission plan and the city manager plan is rendered difficult by the fact that it is well-nigh impossible to disentangle the improvements which are due to the organization and administration of the new forms from those which are due to that awakening of civic consciousness which inevitably accompanies changes in government.

The writer avails himself of this opportunity to express his thanks to many friends for their readiness in giving information and furnishing materials for this monograph. It is to Professor Benjamin F. Shambaugh and Professor Frank E. Horack that he feels the deepest obligation. From the beginning to the end both Professor Shambaugh and Professor Horack took active interest in the work and were never sparing in giving encouragement. To Dr. Dan E. Clark the writer is indebted for criticisms and suggestions after the work had reached the manuscript stage. Furthermore, he desires to express his appreciation of the many courtesies extended to him by the library staff of The State Historical Society of Iowa and of the State University of Iowa.

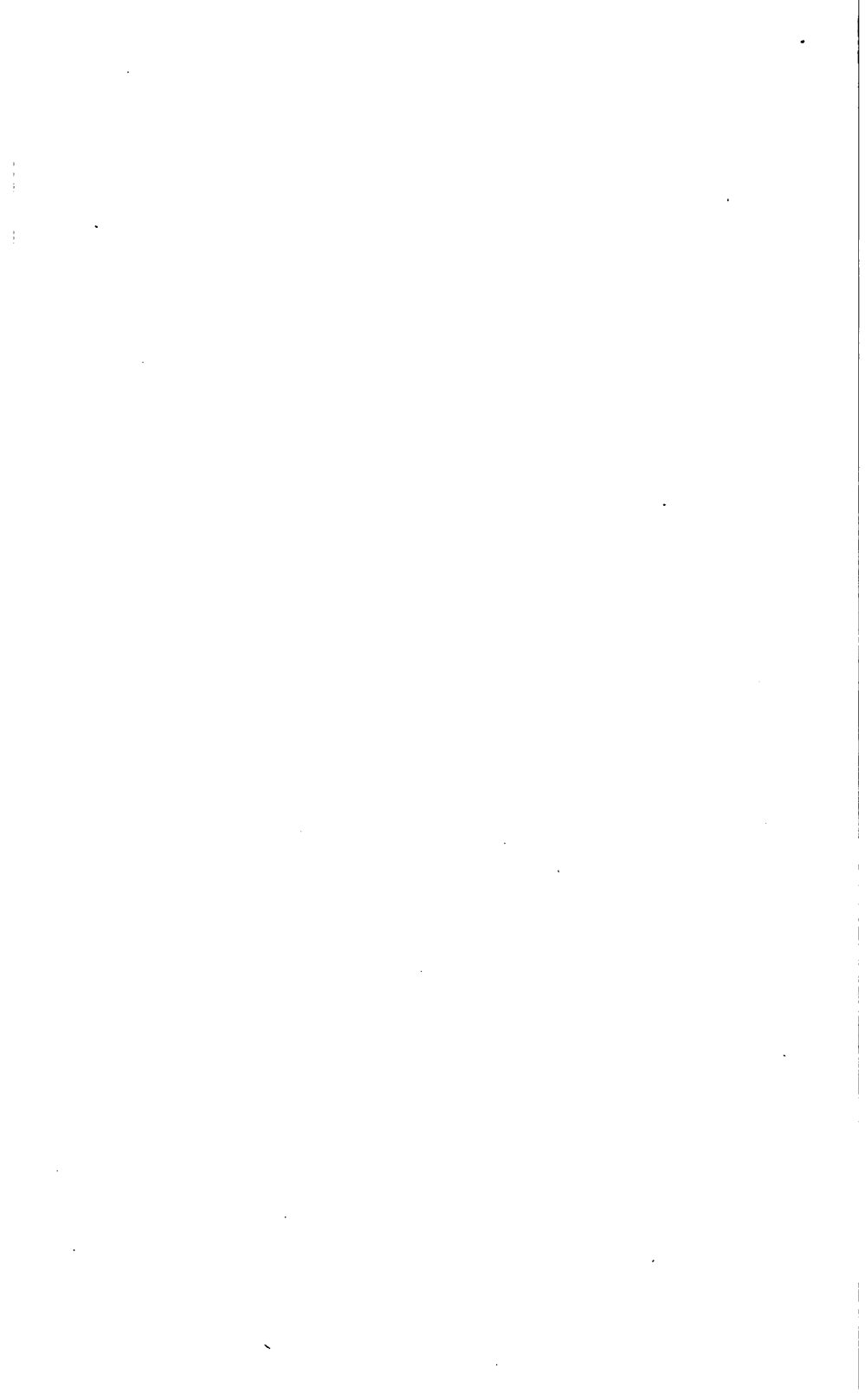
TSO-SHUEN CHANG

PEKING GOVERNMENT UNIVERSITY  
PEKING, CHINA



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# I

## INTRODUCTION

It is only within recent years that the people of the United States have shown any great interest in the problems of municipal government. From the establishment of the national government until about the last quarter of the nineteenth century the people were busy with the problems of expansion, slavery, civil war, reconstruction, and other pressing national questions. These were solved one by one; but as a rule the cities were left to develop under obsolete and outgrown charters, and few people ever took much notice of them. The consequence of this neglect is well known to every student of American politics and institutions.

"American city government has had a multitude of grievous charges laid at its door. Numbers of these accusations were unjust, but far too many counts of the indictment have been sustained. Instituted to serve the citizen, too often has the city organization been the harbinger of those who robbed the people by their corruption and inefficiency. These are stinging charges to substantiate against our institutions of administration, but even the most callow enthusiast must admit the fallacies in our systems of municipal management. Such is the situation."

Such were the conditions when students and writers began to take notice of the problems connected with the various phases of city government in the United States. They were greatly startled, and the American electorate has at last awakened to a realization of the need of improving the machinery of city government. Municipal government in America has thus assumed, during the last few decades, the position of an overshadowing issue among the grave problems confronting the American citizens.

Municipal government, especially American municipal government, is certainly the most important and the most difficult phase of government. It is most important because munici-

pal government is "the foundation upon which is built the entire governmental structure of the nation."<sup>3</sup> It touches the life of the citizen at more points and is of more vital importance to his interests than any other branch of government with which he comes in contact. In the words of ex-Governor Hughes of New York, "The source of political power is more and more to be found in our cities. And there also, in an awakened feeling of responsibility with regard to matters which directly concern the lives of the citizens, may be found the needed purifying force."<sup>4</sup> Indeed, city government in modern times is one of the great factors in human life, and it gives promise of becoming of even greater significance during the coming generation.

Municipal government is the most difficult to administer because of the multitudinous and constantly increasing functions which it has to perform, and also because of the exceedingly complex conditions of modern municipal life under which these functions must be exercised. The great concentration of population, the rapid growth of industrial centers, and the diversity of interests in the modern city have brought into the foreground a mass of new and complicated problems which the city is compelled to face and solve. Indeed, the cities are "the nerve-centres of the social, industrial, and political world."<sup>5</sup> At the same time, the mechanism of city government, which in this country was modelled on the pattern in vogue for the nation and the States and which fitted the wants of the public at the time when municipal problems and municipal evils were unknown, has proved to be very defective under the complex conditions of modern times. Hence, there arises the problem of reorganization, that is, the problem of adjusting the mechanism of government to the conditions and problems which municipal government has to face.

Such a problem of readjustment and re-organization is by no means peculiar to municipal government: it is equally present in the Federal and Commonwealth governments. It has been well said that in this country "there is never a year in which the people of one State or another are not assembled in convention to reconstruct its organic law from its very foundations. There is never an autumnal election at which the people of several

States do not vote for or against important changes in their Constitutions.”<sup>6</sup> To the same effect are the words of James Bryce: “America changes so fast that every few years a new crop of books is needed to describe the new face which things have put on, the new problems that have appeared, the new ideas germinating among her people, the new and unexpected developments for evil as well as for good of which her established institutions have been found capable.”<sup>6</sup>

This spirit of restlessness and constant agitation for improving existing conditions is more manifested in the movement for new city charters than anywhere else. Since the beginning of this century the movement for good city government has spread over the whole United States. The progress of municipal reform, however, has been slow, although not unattended by encouraging features. But the movement, even at the very outset, had produced a ferment in a thousand active minds. Organizations for municipal reform have become numerous and widespread, and publicists and statesmen have searched diligently for the model system of government which would rescue the cities from inefficiency and misrule.

The recent reform movements in municipal government, having proceeded upon the theory that failures in administration and leakages in the public treasury are due more often to inefficient organization and antiquated methods than to official dishonesty, are directed along two distinct lines—home rule and commission government.<sup>7</sup> “Home rule seeks an enlargement of the powers of the municipality; commission government, a more efficient organization to exercise these powers. The city’s powers are inadequate, according to the first movement; its organization is inadequate, according to the second.”<sup>8</sup>

Of all the plans yet tried, that of government by a commission, having as its goal the re-organization of the machinery and methods of government, is the most promising.<sup>9</sup> In connection with this form there has been recently developed a modified plan, known as the city-manager, or commission-manager, plan. The commission form and the commission-manager plan are the most conspicuous developments of recent years in the realm of American municipal affairs: they deserve serious and careful consideration from students of government.

The commission form of city government is not a definite and fixed type of municipal organization. With the increase in the number of cities operating under this so-called commission form of government, and with the increase in the number of deviations and departures from the original Galveston plan found in various cities and communities which are claiming to have a commission plan of government, it is rather important to have clearly in mind at the very outset, what is and what is not commission government.

The term "commission government" as applied to American cities is somewhat misleading and confusing. It is misleading in that the word "commission" has usually implied an appointive body. But ever since the Galveston commission ceased to be appointive by the Governor and became elective, there has been no city in the country "governed by commission," except Washington, D. C., the government of which is entirely different from what we now understand as commission government.<sup>10</sup> It is confusing, because in those States where "commissions" have been important branches of State administration, the term is used in connection with two entirely different things—according as it is applied to State or to city.<sup>11</sup>

When applied to State and national administration, the term "commission" is used in connection with the practice of delegating the administration of certain specified functions to appointed administrative boards or commissions, such as the Interstate Commerce Commission, the Federal Trade Board in the national government, and the railroad commissions and tax commissions in the Commonwealth governments. These commissions are appointed by the President or the Governor for definite terms with fixed purposes, and are often granted almost complete power in their particular spheres. Consequently, "commission government," as applied to States and viewed from the standpoint of State administration, connotes "decentralization, the delegation and division of authority and responsibility, and the disintegration of popular control."<sup>12</sup> The same idea is more effectively and more strongly expressed by Francis H. White in an article entitled *State Boards and Commissions in the Political Science Quarterly*, as follows: "In

effect, the commission system establishes a fourth department of government directly responsible neither to the people, for the members are seldom elected; nor to the legislature, for it does not appoint or remove; nor to the Governor, for though he appoints, it is seldom he has the power of removal."<sup>23</sup> For this reason there has been developed, with the spread of the movement, considerable prejudice against the number and scope of such commissions which, as has been asserted, take away the real power from the representatives of the people.

But the term "commission government" has an entirely different meaning when applied to municipal administration. In contrast with its use in connection with State administration, the term when applied to municipal administration is used to designate "the most concentrated and centralized type of organization which has yet appeared in the annals of representative municipal history."<sup>24</sup> Commission government, as applied to the city, has been defined as "that form of city government in which a small board (less than ten) elected at large, exercises substantially the entire municipal authority, each member being assigned as a head of a rather definite division of the administrative work; the commission being subject to one or more means of direct popular control such as publicity of proceedings, recall, referendum, initiative and a non-partisan ballot."<sup>25</sup>

Under the above-quoted definition, some notice may be taken of the different elements which are included in this type of municipal government. These elements are not all of equal importance: some of them are very essential, without which a charter can not properly be placed in the commission government class; while others, though more frequently incorporated in commission charters than in charters of other types, have in reality nothing more to do with commission government than with any other type of municipal government.

The leading features or characteristics of the commission form of government may, therefore, be conveniently divided into two classes: the essential, and the non-essential. The essential features are those which are absolutely necessary to identify a charter as a commission government charter; and the non-essential features are those which may or may not be incorporated



into a commission charter without in any way affecting the status of the charter as respects the commission plan. Opinion may differ as to what are essential and what are non-essential features of commission government. But among all writers there is agreement that the most essential element which distinguishes the commission charter from all the other types of charters and which accounts for the popularity and widespread adoption of the plan is this: "conspicuous responsibility—and hence accountability—of all elected officials to the people."<sup>16</sup>

This "conspicuous responsibility" is secured, in the first place, through a complete centralization and concentration of all powers and responsibility in a small council or commission, which is never to exceed ten members and usually consists of not more than five. This council or commission must not only exercise all administrative authority, but must legislate as well. Indeed, the abandonment of the doctrine of the separation of powers as applied to municipal government and the concentration of the legislative and administrative authority in a single small body is the predominating feature of the new system. Furthermore, the members of the commission must be the only elective officer of the city, with the possible exception of the auditor, and must have the power of appointing and removing all the subordinate administrative officials of the city. Finally, each member of the commission is placed in charge of a particular department so that the work of administration is conveniently sub-divided and close oversight of each branch of municipal work is insured. The individual commissioner is responsible to the commission as a whole for the work of the particular department of which he is the head; and the commission, in turn, is responsible to the citizens and voters for the entire administration of city affairs. Consequently, official responsibility is not only definitely fixed, but fixed on the officials elected by the people.

Writers on the commission plan seem to agree with regard to the features just discussed, but upon other points it appears that opinions differ. Other features which have come to be regarded in the popular mind as the earmarks of the commission plan have been considered by some writers as essential features

and by others as non-essentials. Among these debatable features may be mentioned election-at-large, the non-partisan ballot, the merit system in the appointment of subordinate administrative officials, and the placing of officials under direct popular control through the initiative, referendum, and recall.<sup>17</sup>

Election-at-large is no doubt desirable in small cities, as it tends to eliminate petty log-rolling and to emphasize the unity of the city. But the importance of this feature has been over-emphasized: almost all the writers regard it as one of the chief essential features of the new plan, and almost all commission statutes and charters contain provision for it. But it must not be forgotten that commission government is a type of municipal government, and that election-at-large and representation by wards are simply methods of representation. Either of these two methods may be included in any type of municipal organization without modifying in any way the essential features of that particular type of government. Indeed, many city governments of the old orthodox type elect their councilmen on a general ticket. Boston and San Francisco are examples.<sup>18</sup> But the election of the councilmen on a general ticket does not in any way affect the municipal organization of these two cities.

The elimination of the ward as a characteristic feature of the commission plan is perhaps due to the fact that for a long time ward elections have had a bad name in this country. "American ward representation, ward politics, and ward organization have come to be associated in the public mind with bossism, trickery, and almost everything else that is politically demoralizing. A feeling so deeply lodged can scarcely be without some substantial foundation."<sup>19</sup> But in England, where councillors are chosen from wards,<sup>20</sup> the method works in a highly successful manner. The difference, as pointed out by Professor Beard,<sup>21</sup> lies in the fact that "ward offices in this country have been characteristically unimportant and obscure." In the commission plan or the commission-manager plan, however, a councillor or commissioner is an exceedingly important officer: his position is entirely different from that of his prototype, the councilman under the old type of city government. Thus, there is no ground for believing that the commissioners must be elected at large lest the commission principle be violated, as one writer has said.<sup>22</sup>

Furthermore, when cities of fifty thousand population or upwards—like Oakland, St. Paul, Jersey City, Buffalo, and others—have adopted the new plan of government, there have been good reasons for advocating the election of commissioners by wards, instead of at large. In such cities “the mere size of the electoral unit acts as a discouragement to independent candidates of moderate means and gives advantage to organized standing political organizations, inasmuch as the task of improvising an equally effective impromptu vote-getting organization is too much for the resources of the individual candidate. In larger cities, therefore, ward election or proportional representation is advised, as a genuinely free and open competition for office is more likely to ensue.”<sup>23</sup> To the same effect are the words of Professor Herman G. James.<sup>24</sup> “The practice of election on general ticket,” he says, “presents increasing difficulties the larger the area of election, since the labor and expense of conducting a campaign are greatly augmented. But aside from that, it seems unquestionable that some of our largest cities are made up of several geographic divisions which really have rather distinct needs and whose interests would perhaps better be conserved by a representative body in which these geographical divisions as such have representation.”

Indeed, a ward election under the commission form of city government will be a different matter from that witnessed in the past, for the commissioner under the new plan is a very important officer—one of the supreme directors of the city. Thus, it seems that it is possible, and in some cases even advisable, to have a ward system of representation under the commission form, and that there is no ground for speaking of the general-ticket system as the essential feature of the commission form of government. Election-at-large is not an essential feature, but simply one of the “other features” of the commission form of city government.<sup>25</sup>

Other features which are frequently connected with the commission form of government are non-partisan election; the initiative, the referendum, and the recall; and provision for a civil service commission. Ever since the Des Moines plan incorporated these features they have been found in almost all

commission charters, as well as in nearly all recent charters of other types. But they are by no means essential features of commission government. The non-partisan ballot is certainly very desirable, but not indispensable; for "the short ballot by making the party label a superfluous convenience, thereby destroys much of the label's influence anyway."<sup>26</sup> The initiative, referendum, and recall are methods of direct legislation and devices for enforcing popular control over officials. These devices may be applied to any branch of government, national, State, or local. Indeed, the initiative and referendum were to be found in the New England town meeting long before the appearance of commission government. There is, therefore, no more reason to connect these features with commission government than with any other type of city organization. The same is also true of the civil service provision, which is but one of the methods of selecting public officials and fundamentally has nothing to do with the commission form of city government as such.

Thus, all these new devices for enforcing popular control, which are almost always attached to recent commission statutes and charters, do not enter vitally into the theory or practice of the plan as such. When all these non-essential features are eliminated, "conspicuous responsibility" is the only essential element which characterizes the commission plan of government. In other words, "a true Commission Plan is one which conforms to the Short Ballot principle which is defined by the Short Ballot Organization as follows:

- First: That only those offices should be elective which are important enough to attract (and deserve) public examination.
- Second: That very few offices should be filled by election at one time, so as to permit adequate and unconfused public examinations of the candidates."

Thus the true test of a commission charter simply depends upon whether or not it embodies the element of "conspicuous responsibility"; and if this fact is borne in mind there will be no difficulty in deciding what is, and what is not, a commission form of city government. This distinction is important because there are many cities in the United States which, while desiring the advertisement that has usually accompanied the adoption of this type of government, and being at the same time unwilling

to abandon the old eighteenth century political superstitions, have adopted one or more non-essential features of the commission plan and have then advertised themselves as commission-governed cities.

In spite of the spread of the commission form of government during the last decade, and in spite of the numerous beneficial results which have been actually attained in cities operating under this type of government, the commission plan of city government has not proved to be the "cure-all" its enthusiastic advocates expected. Commission government is no panacea for all municipal evils. The merit of the plan consists in pointing out the way to some simplifications in the machinery of city government. But it is far from being perfect. There are defects in this system, just as in any other plan of government, the most serious of which arise in connection with the actual administration of the plan.<sup>28</sup>

Theoretically there are in the commission plan, as has already been pointed out, both the collective responsibility of the commission as a whole for the entire administration of the city and also the individual responsibility of each commissioner for the administration of the department which has been put into his charge. But as a matter of fact the collective responsibility of the entire commission is of secondary importance, while the individual responsibility of the members is by far the most important consideration. It usually happens that the individual member in charge of a particular department may not be in sympathy with the policy imposed upon him by the commission as a whole. In such a case—especially in cities where each commissioner is elected to a specific office—he may choose to regard himself as responsible to the people rather than to the commission; and instead of carrying out the policy formulated by the commission as a whole, he may choose to carry out a policy of his own, which may not be in harmony with the policy of the other departments. In the experiences of some commission-governed cities there are not lacking instances which point to such an effect.<sup>29</sup> Indeed, the system of independent elective department heads is not consistent with the theory of undivided responsibility. Administration has been defined as "that func-

tion of government which demands for its proper exercise centralization of power and responsibility."<sup>30</sup> But such an administrative centralization of power and responsibility can not be secured under the five-headed administrative system, even though real experts can be secured through popular election, and even though the salaries provided for are large enough to attract the services of efficient administrative officers. The various phases of municipal administration, although divided among different departments, are so intersecting and so overlapping in their spheres of operation that they can never be independent of each other. Administrative efficiency is impossible unless there is centralization of power and responsibility—which, in turn, can not be secured unless there is a central single-headed executive authority.

Another serious question which arises in connection with commission government is the question of how real experts can be secured to take charge of the administrative work in each department. "A man cannot be taken from the merchant's store or from the workman's bench and be turned into an efficient administrator by the simple magic of popular election by free citizens of a great republic."<sup>31</sup> When the voters are asked to elect commissioners to take charge of specific offices, they are burdened with the difficult task of gauging the executive and administrative ability of the candidates. Such a task, as experience has proved, is beyond the power of the voters, in view of the natural inability of the ordinary citizens to judge the technical qualifications of the different candidates for the office. Furthermore, the imposing of requirements of technical or administrative ability in elective officers not only narrows the field of popular choice, but also restricts the freedom of the people to follow their instincts and choose candidates primarily with reference to their representative character.

On the other hand, if the commissioners should be chosen in a body, with power to apportion the offices among themselves after the election, then there is the possibility of the choice of popular candidates, each of whom might be well qualified for a certain one of the offices, while none of them might be fitted for any of the other positions. Undoubtedly, there are arguments for

and against election to specific office and election at random,<sup>33</sup> but as both of these plans are unsatisfactory, they will not be discussed further in this connection. The results of the elective systems, whether providing for election to specific office or for election at random,<sup>34</sup> as provided in the ordinary commission plan are just the same: amateurs are called upon to execute what only those with professional experience are competent to perform. This is a very serious defect of the new plan. It is so serious that some students predict the failure of the plan because of the provision for the popular election of the city's administrative department heads.

In the hope of remedying such defects in the commission plan, there has been evolved the city-manager plan, which would provide for the possibility of expert administration together with a unification and centralization of administration. "It creates a single-headed administrative establishment instead of the five separate administrative establishments seen in the Des Moines plan. This administrative unity makes for harmony between municipal departments since all are subject to a common head."<sup>35</sup> The city-manager plan, is therefore, the inevitable and logical outcome of the commission plan. It carries forward still further the ideas of centralization and responsibility which find expression in the commission plan.

The essential characteristics of the commission-manager plan are, therefore, the centralization of administrative and legislative powers. Under this plan there is, in the first place, "a single board (commission) representative, supervisory and legislative in function, the members giving only part time to municipal work and receiving nominal salaries or none;" and secondly, "an appointive chief executive (city manager) hired by the board from anywhere in the country and holding office at the pleasure of the board."<sup>36</sup> The city-manager is, then, "a competent, experienced, trained and capable person selected on account of his peculiar fitness and ability to manage the affairs of the city."<sup>37</sup>

Thus, under the new plan, the attempt has been made to differentiate the legislative from the administrative power. But this is not the same kind of differentiation that existed under the



old council-mayor plan. In former times it was the fear of political tyranny that raised advocates of the doctrine of the separation of powers, and therefore administrative and legislative authority are lodged in different bodies which are in a large measure independent of one another. To-day the theory of the separation of powers has been abandoned under the commission plan because of the political inefficiency that would result from the adoption of such a doctrine. But the question still remains whether legislative and administrative powers can safely be intrusted to an elective body, without militating against the highest administrative efficiency. Finally, the question has been solved by making the functions of the commission supervisory and legislative, and by vesting the administrative authority in a city manager, who is hired by the commission, is under its supervisory control, and holds office at its pleasure. The city manager is, as Childs has aptly put it, a "controlled chief executive."<sup>66</sup> It is the aim of the latest plan in American city government to dispose of the conflict of authority and responsibility, and to overcome the difficulty in securing expert administrative department heads as found under the commission form. At the same time it is an attempt to avoid the evils arising in connection with the independent executive plan of city government.

Such, in brief, are the fundamental principles underlying the commission form of city government and the commission-manager plan. It is the purpose of the writer in this study to trace the origin and development of these two plans of city government in America, and to analyze the statutes and charters relating thereto.

## II

# DEVELOPMENT OF AMERICAN MUNICIPAL ORGANIZATION

It is difficult to understand why there has been of late so strong a sentiment in favor of the adoption of the commission form and the commission-manager plan of city government, unless one first has clearly in mind the general trend of American municipal development. The movement towards city government by commission or by commission-manager is not an isolated municipal experiment, but a phase of a general tendency; and in order to appreciate the real significance of this particular form of municipal government, to grasp the causes which called it into being, some knowledge of the history of American municipal organization is indispensable. A brief survey of the institutional history of American municipal government from the colonial period down to the end of the nineteenth century is, therefore, necessary.

"American municipal government has its historical origin in the chartered boroughs or municipal corporations established in several of the English colonies during the seventeenth and first half of the eighteenth centuries."<sup>37</sup> Again, colonial municipal corporations had their origin in the English borough. Thus, there is a continuous development of the institutional history from the English borough, through the colonial municipal corporations, to the American cities of to-day. The influence of English conditions on the American charters, both colonial and modern, is clearly visible. In the first English charter granted in 1665 to the city of New York, it was expressly stated that the officials of the city should be "Knowne and called by the Name and Style of the Mayor Aldermen and Sheriffe, according to the Custome of England in other his Majesties Corporations."<sup>38</sup> In commenting on the first Boston Charter of 1822, Nathan Matthews says that "in substance, the organization provided by the charter was simply an adaptation of a form of municipal

government which has existed for centuries in the commercial towns of England."<sup>39</sup> A few words on the system existing in England in the seventeenth and early part of the eighteenth centuries are therefore necessary for a proper understanding of the beginnings of American city government.

The typical English borough about that time has been described by Bishop Stubbs as "a close corporation of a mayor, aldermen, and council with precisely defined organization and numbers—not indeed uniform, but of the same general conformation—possessing a new character denoted in the name of 'corporation' in its legal sense."<sup>40</sup> Uniformity in English borough government at that time was impossible, because each borough was incorporated through a separate grant by the Crown of its own special charter. As a consequence the powers and functions of these corporations varied widely. As a rule the sphere of action of the English borough about that time was a very limited one. "The management of local police, the judicial administration, the direction of markets, and the charge of the ancient town property sum up the local interests under the control of the borough governments even in the larger towns."<sup>41</sup>

Such was the model on which the original American system of municipal government was framed. During the colonial period twenty corporations were created by the Governors as representatives of the Crown.<sup>42</sup> All these charters were accepted by the inhabitants of the incorporated area: they were not imposed on the people since it was a principle of the English law that the King could not create a corporation without the consent of the people affected thereby.<sup>43</sup>

In all cases the grant of a borough charter provided for the creation of a governing body, which followed very closely the pattern of English municipal organization during the latter part of the seventeenth and the early part of the eighteenth centuries. The principal authority in these boroughs or cities was the Common Council, which was composed of the mayor, a recorder, and a number of aldermen or assistants, all sitting together as one body. After the English pattern, the mayor, the recorder, and the aldermen were vested with certain judicial

functions in addition to their duties as members of the Common Council. But contrary to the prevailing English system, the councilmen and aldermen were elected "by a popular vote under a franchise which everywhere included all of the well-to-do classes, and generally a large proportion of the residents, though in no case was manhood suffrage established."<sup>44</sup> With few exceptions, aldermen and councilmen were elected for a term of one year. In Philadelphia, Annapolis, and Norfolk the English system of the close corporation was followed. Here the governing body was a close corporation, that is, "the aldermen and councilmen held their positions for life, and vacancies among the aldermen were filled by the corporations (*i. e.* by the Common Council), and for councilmen by the mayor, recorder, and aldermen."<sup>45</sup>

Following the English precedent, the mayor was in no case chosen by popular vote. In the close corporations he was elected from the existing aldermen by the corporation, and in other cases he was appointed by the Governor of the Province. Whether elected or appointed, the mayor held office for a term of one year; but re-appointment was not uncommon. The mayor was the presiding officer at all the meetings of the aldermen and of the Common Council, and his presence was necessary to constitute a quorum. He had no power of appointment unless delegated by the council, and in no case had he a veto power. In Philadelphia he did not even have the right to vote in council; but elsewhere he had such a power. He was also charged with the execution of the laws and ordinances and therefore had rather a wider police power than had any other member of the Common Council. "These conditions tended to center the administration to a considerable degree in his hands; while his influence in municipal affairs was further increased by the fact that he was usually a man of much experience in the affairs of the corporation, and that in practice he held office for a number of years. Thus, even during the colonial period, the mayor became something more than a dignified figure-head, and was a real force in the municipal government."<sup>46</sup>

The functions of the colonial borough included judicial, legislative, and administrative duties. The judicial functions,

which were vested in the mayor, the recorder, and the aldermen, were relatively more important than the other functions. The mayor, the recorder, and the aldermen were each justices of the peace, and while sitting together they formed a local court of record. In some instances they were members of the county court.<sup>47</sup>

As to the legislative powers, the municipal corporations were authorized to "make, ordain, and establish such laws and ordinances as should 'seem to be good, useful, or necessary for the good rule and government of the body corporate' and to alter and repeal the same."<sup>48</sup>

The administrative jurisdiction of the colonial corporations were "almost exclusively over matters of special interest to the small urban communities, and seldom included any of those matters for which there was a general system over the entire province."<sup>49</sup> But as local needs increased with the increase of the population in certain places during the eighteenth century, and as the corporations had no authority under the charter to supply these needs, frequent additional grants were conferred on the corporations, not by the Governor, but by the colonial assembly.

Thus, American municipalities during the colonial period, though modelled on the then existing English boroughs, differed from the latter in several distinctive features. "Close corporations were the exception; the mayor was already an active official in the city government; central control over the municipalities existed from the first in the Governors' power of appointing mayors; while the way was paved for a more active control through the special legislation of the assemblies in response to the demand of the municipalities for larger powers than those conferred in their charters."<sup>50</sup>

Such, in brief, are the chief characteristics of the American colonial municipal system. The most striking feature of it is the fusion of the legislative, administrative, and judicial duties in one and the same body of persons. This fusion of duties has led President Goodnow to conclude that the present commission system of government "returns to the original form of city government in the United States in that it concentrates all powers, administrative and legislative, in one authority."<sup>51</sup> Para-

doxical as this statement may seem the commission system of city government has evolved logically from the colonial framework of local government. During the colonial period when the functions of the municipalities were few and when the local needs to be provided for were not pressing, the machinery of government which had to carry out these functions and to satisfy the necessary local needs was not required to be highly organized. Indeed, government under such conditions was very simple: a single board of a few members could administer the entire government, and in the colonial municipalities this proved to be the case.

But as conditions have gradually changed and when public health and safety, education, poor relief, the improvement of highways, and scores of other new problems have come within the horizon of the activities of the municipality, new organs have been added, from time to time, to the existing machinery of government, and consequently the mechanism as a whole has become more and more complex. This tendency was illustrated by American experience in municipal government during the first and second quarters of the nineteenth century, when various offices were created and different boards or commissions were either elected or appointed to take charge of the various functions and to solve the numerous problems which burdened the municipalities because of the rapid changes in the industrial and social conditions of the city.

Such developments continued for some time without criticism; but finally the people discovered that the complex and complicated machinery was not satisfactory and that the principle underlying the existing structure was fundamentally wrong and unsound. The result has been a reaction against the cumbrousness of municipal machinery—a reaction which came during the latter part of the nineteenth century and manifested itself in the movement for the simplification of the machinery of government. The logical outcome of this reactionary movement has been the return to the original principle of municipal organization through the creation of the commission form of government, in so far as the vesting of all the municipal authority in a single body is concerned. Indeed, the commission form has been

regarded by an eminent authority on the subject as "the climax of a well-defined movement, from the influence of which hardly a single large city in the country has been entirely exempt"<sup>52</sup>—a fact that is evidenced by the history of American municipal development.

Differentiation of American municipal government from the British borough type had already proceeded to a considerable degree even during the colonial period. But the Revolution and the establishment of the State Constitutions brought about still greater changes in municipal government in this country—particularly with respect to the position which the city henceforth occupied in its relation to the State government.

The substitution of elected for appointed Governors changed the entire relationship between the city and the State. In the first place, the Governor ceased to appoint the mayor—this function being transferred to the State executive council. Secondly, the charter-granting power was transferred from the executive to the legislative department of the State government. To be sure, a number of charters appeared after the Revolution; but they were issued by the State legislatures in the same manner as other statutes were enacted. "By this change these charters could not claim the privileges of special grant which could not be violated: they were simply legislative statutes, and as such liable to be altered, changed, or revoked by subsequent statutes."<sup>53</sup>

Although the first legislative charters did create municipal government practically in conformity to the then existing organization, there were still marked differences between the new municipal constitutions and the old ones. Not one of the new charters was based upon the close corporation idea; and the popular election of the councilmen was firmly established as the fundamental principle of American municipal government.<sup>54</sup>

Such changes can be well illustrated by the history of the city of Philadelphia during this period. With the Revolution the first charter of Philadelphia, known as Penn's Charter granted in 1701, came to an end. But "when the war cloud had passed by, the evils arising from the lack of systematic government became so imminent that the memories of past grievances van-



ished before present necessities, and in 1783, a petition largely signed was presented to the legislature and referred to the city members."<sup>56</sup> As a result the second charter of Philadelphia was passed by the legislature on March 11, 1789. By this charter the government was made essentially representative, and the administration of local affairs was vested in the mayor, aldermen, councilmen, and the recorder. The aldermen and councilmen were elected by the people, the mayor by the aldermen, and the recorder by the mayor and aldermen.

This charter and others enacted during this decade are important as "marking the complete legal supremacy of the legislatures over the municipalities, since not even the existing charters are recognized as barring any measure the legislature might feel disposed to enact."<sup>56</sup> Indeed, this decade has been well termed as "a time of special crisis [in municipal development], an epoch of transition from the old English to the new American type of urban government."<sup>57</sup>

It may be noted in this connection that several salient features stood out prominently in the political philosophy of the statesmen of this period. Chief among these was Montesquieu's theory of the separation of powers: that is to say, the powers of government should be distributed among three distinct departments—legislative, executive, and judicial. Another characteristic of the political philosophy of the time was a preference for the bicameral legislature composed of members representing different interests or geographical units. The theory of the separation of powers and the idea of a bicameral legislature constituted the most important features of the system of the eighteenth century political philosophy. Indeed, the principle of divided power or of checks and balances had become an axiom in political science and a maxim of constitutional government. The fundamental idea underlying the whole system was that unlimited power should not be vested in any department.<sup>58</sup> These principles, which were formulated in connection with the re-organization of national and State governments, and which were sanctioned in the organic laws of the States and the nation, were gradually transferred to municipal government. Thus the dominant factor in municipal development during the last

decade of the eighteenth century and the first quarter of the nineteenth century was the influence of the so-called "federal analogy".

In the closing years of the eighteenth century a series of new charters had been passed and several old ones amended. Among them, the charter of Baltimore enacted in 1797 and the act passed in 1796 to amend the Philadelphia charter were particularly important because they marked the beginning of the application of the "federal analogy" to municipal government. In Philadelphia the amendment to the charter introduced the bicameral system. The aldermen, recorder, and mayor were deprived of all legislative powers, which were now exclusively vested in a select council of twelve members and a common council of twenty members who were popularly elected and who acted in separate bodies.<sup>59</sup> A third house or division of the council, consisting of fifteen aldermen, was to be appointed by the Governor. They were to hold office during good behavior and had all the powers formerly vested in the board of aldermen, "legislative powers only excepted." The mayor was elected annually from the fifteen aldermen by the select and common councils in joint session. According to the charter, the duties of the mayor "besides that of an alderman of the said city, shall be to preside in the mayor's court when present, to promulgate the by-laws, rules and ordinances of the corporation and to pay special attention to the due execution and fulfillment of the same".<sup>60</sup> He had no power of appointment, no control over city officers, and no veto power.

The Baltimore charter of 1797 vested the government of the city in a mayor and a bicameral city council. "The lower house or First Branch was composed of two members elected annually by popular vote from each of the eight wards into which the city was divided. The upper house or Second Branch was composed of one member from each ward, elected by a miniature electoral college made up of one elector from each ward chosen by popular vote at the time of electing the members of the First Branch. The mayor was elected at the same time and in the same manner as the members of the Second Branch of the council."<sup>61</sup> By subsequent legislation the electoral college system

for the choice of the members of the Second Branch was abolished, but it was retained for the election of the mayor who was given the same veto power over the acts of the council as the President of the United States has over the acts of Congress. But in the distribution of powers the national model was not exactly followed, for in the matter of appointment the mayor was restricted to two candidates for each office nominated by the council.<sup>63</sup>

The beginning of the nineteenth century marked no distinctive changes in municipal organization. There were few charters enacted in the first two decades, the more important being the charter of New Orleans issued by the Territorial legislature in 1806, and the first city charter of Detroit enacted in the same year. The New Orleans charter followed practically the lines already laid down in the earlier charters. The officers were a mayor, a recorder, a treasurer, and a number of subordinate officers; and the council was composed of fourteen aldermen, two from each of the seven wards into which the city was divided. The mayor was appointed by the Governor of the Territory, but provision was afterwards made for his election.<sup>64</sup>

The charter of Detroit vested the government in a mayor appointed by the Governor, and a city council composed of two chambers of three members each—all elected by the people. The mayor was given an absolute veto power in reference to all the acts of the council and he had the power to appoint all city officers except the register. The council was given extensive powers, the exercise of which was subject to the mayor's veto.<sup>65</sup>

The consequence of this incorporation of the chief features of the national and State governments in municipal charters was very unfortunate. The system of checks and balances in municipal government, instead of safeguarding the interests of the people against the arbitrary and ill-advised acts of public officers, became an obstacle to the prompt and efficient performance of municipal functions which were constantly growing with the growth of cities. These changes, the autonomous mayoralty, the bicameral council, and the executive veto, which made their appearance in municipal charters before the close of the second decade of the nineteenth century and which distinguished the

municipal organization of this period from that provided in the colonial charters, were made "not because those who were responsible for them had any experience applicable to municipal conditions—for at the time these changes were made no one can be said to have had this experience, as the modern city is a very new thing,—but because these changes were in accordance with principles which it was universally believed had been successfully applied in the national and state governments."<sup>65</sup> With the exception of the changes just mentioned, the operations of municipal government during the first two decades of the nineteenth century had not undergone any marked transformation from those of the colonial period.

The period from 1820 to 1850 was characterized by the further development of the features already noticed in the previous period. At the time, the appearance of new tendencies was not lacking. In the new Constitution of New York, adopted in 1822, important changes in municipal government were introduced. The appointment of the mayor was henceforth taken from the Governor and vested in the city council.<sup>66</sup> Three new charters enacted about the same time went a step further and provided for the popular election of the mayor. These were the charters of Boston and St. Louis (1822) and Detroit (1824). But the mayor was still in almost all instances not a very important officer in the administrative system of city government. The charter of Boston illustrates this point. The financial, executive, and administrative powers of the government were vested partly in the mayor and the aldermen, to whom the powers of the selectmen of the town were transferred, and partly in the city council to be exercised by concurrent vote of both branches. "Beyond the power to appoint committees which this position gave him, the mayor was little more than a figure-head; and although he was enjoined by the charter 'to be vigilant and active at all times in causing the laws for the government of said city to be duly executed and put in force', and 'to cause all negligence, carelessness and positive violation of duty to be duly prosecuted and punished', the Legislature omitted to clothe him with powers necessary for the performance of these duties."<sup>67</sup>

The charter of St. Louis vested the administration of the affairs of the corporation in a mayor and a board of aldermen, all of whom were to be elected annually by the qualified voters. Both the mayor and the aldermen were required to possess a freehold estate within the city limits, and were vested with powers not differing from those conferred upon like officers in other cities.<sup>68</sup>

The Detroit charter of 1824 provided a considerable number of elective officers. Among them were a mayor, five aldermen, a marshal, a supervisor, an assessor, a collector, and three constables, all chosen annually. The other officers, including a recorder, a treasurer, and a clerk, were to be appointed by the mayor and the aldermen. The mayor, the recorder, and the aldermen were to constitute the common council, and the recorder was to be the vice mayor of the city.<sup>69</sup>

The New York charter of 1830 was another typical charter of the period which indicated fairly well the general trend of the time towards the elaboration of the administrative principles already introduced during the previous decades. The charter of 1830 "proposed nothing short of an entire remodelling of the city government after the pattern of the federal and state constitutions, but the spirit of their too general enactments was little carried out in practice."<sup>70</sup> By this charter the city council was divided into two chambers "for the same reason which has dictated a similar division of power into two branches, each checking and controlling the other, in our general government."<sup>71</sup> The mayor was given the right to veto any order or resolution of the council, although his veto could be overridden by a two-thirds vote of both chambers. The charter also provided that the executive business of the municipality should be performed by separate departments organized and appointed by the council. From the mere fact that the mayor could veto the ordinances of the council, however, it should not be inferred that the mayor was made the chief executive of the city. For, as has already been noticed, there were several commissions appointed by the council to perform the executive business of the city.<sup>72</sup>

During the two decades from 1830 to 1850 numerous new municipalities were established and new charters enacted. Pro-

fessor Fairlie mentions forty cities with a population of 30,000 or more that received their first charters during these two decades." The chief feature in all these charters were the extension of manhood suffrage and the tendency towards popular administration. A few examples of these charters may be taken to illustrate this general trend in charter-making at the close of the second quarter of the nineteenth century and subsequent years. The charters of Cleveland (1836), Chicago (1837), and Milwaukee (1846) are typical of this period.

The Cleveland charter of 1836 vested the government in a mayor and a council. The mayor, the members of the council, the treasurer, and the marshal were all to be elected annually. The council was composed of three members from each ward and as many aldermen as there were wards, elected on a general ticket, but no two of them were to be residents of the same ward. The number of wards was fixed at three, but the council had the power to increase or change the number. "This is certainly an extraordinary system, establishing a city council composed so curiously of local and general elements, with power to increase or decrease its own members at pleasure."<sup>4</sup>

In the Chicago charter of 1837<sup>5</sup> two tendencies appeared: first, the extended use of the suffrage in the increase of elective officers, and the tendency of the mayor and council to divide functions. The principle of popular suffrage, though recognized in the new charter, was by no means unrestricted in its application. Indeed, property qualifications for the suffrage generally prevailed throughout the country during this period and Chicago was no exception to the general practice. But the restriction in the new charter was not excessive: a normal tax of three dollars paid within one year before the election entitled the resident to the privilege of the suffrage, and the members of the governing body were required to be free-holders. The significance of the Chicago charter in this regard was that by imposing such low property qualifications it opened the way for the introduction of universal manhood suffrage at the earliest possible date. It was only four years later that all property qualifications were removed.

The governing body, as provided by the charter, was a council composed of the mayor and twelve aldermen. The mayor was popularly elected for a term of one year. As far as administration was concerned he was still unimportant: he was simply a presiding officer of the council. He had no appointing power and could not veto any ordinances passed by the council. In reality the charter "prepared the way for a separation of administrative and legislative functions by removing the mayor from the control of the council in his tenure, but in the development of his power it did not radically follow out the division of powers at the time."<sup>76</sup>

The council was by far the most important body. Indeed, the government provided by the charter of 1837 was an administration by the council, which was supreme in all essential matters. "The supreme position of the council in the charter of 1837 naturally gave it complete control of the municipal patronage. It elected annually a numerous array of administrative officers, who possessed more or less discretionary authority, subject finally to the will of the council."<sup>77</sup> But the supremacy of the council was only of short duration and its powers were greatly curtailed by the charter of 1847, which, in accordance with the prevailing tendency to increase the functions of the electorate, made the city attorney, the city collector, the treasurer, and one policeman for each ward elective and directly responsible to the electorate.<sup>78</sup> Thus, "popular administration has been preserved and fostered in the American municipality to the exclusion of a trained service, by extension of the suffrage to many offices, which, in their nature, require previous preparation."<sup>79</sup>

The Milwaukee charter of 1846 showed exactly the same tendency towards popular administration. The governing body of the city consisted of a mayor, a common council of three aldermen from each ward, and also a justice of the peace and a constable from each ward. All of these officers were popularly elected, with a tenure of office for one year, except the justices of the peace whose term was two years. The mayor was given the important duty of presiding over the common council, in addition to the usual executive functions. He had no power to vote, except in cases of a tie. All other officers—such as clerk, treasurer,

attorney, assessor, and the like—were appointed by the common council. But the appointing power of the council was removed in the next year and the treasurer, the attorney, the marshal, and assessors were made elective by an amendment to the charter. But the powers of the aldermen in other respects were increased during the next few years by a series of special acts and further charter amendments. "These authorized the councilmen of various wards to levy special taxes for grading and graveling streets, building wharves, and dredging the rivers; to levy a general harbor tax; to borrow money and issue ward bonds for street work, and for building market houses; and to provide in various ways for building sidewalks, sewers and the like. All such work was supervised by the aldermen (who also, in a few years, were empowered to make contracts for the same), we can imagine what vast opportunities developed for the grafters and the ward politicians."<sup>80</sup>

It was during this stage of municipal development, when the council was practically supreme in administration and when the appointing power was almost entirely in the hands of the aldermen, that the spoils system made its first appearance in the selection of city officials.

The American municipal council, as has already been pointed out, was practically the only municipal authority known to law in the early days. During the colonial period and a few decades following the council discharged practically all the municipal administrative functions, while the mayor was relatively unimportant, though signs were not lacking to indicate the opposite tendency about the beginning of the nineteenth century. But with a few exceptions like Baltimore and New York City, where the mayor was given the power to veto ordinances, the council, up to the second quarter of the nineteenth century or even later, was the all-important, central body of the city government. All the governmental activities of the city were put into the hands of this organization. Its functions included both the making of the ordinances and the carrying on of the administration. Administrative functions were discharged through the committees of the council, as has been indicated by the charters which have just been analyzed. The council committees appointed to take



charge of specific phases of city administration had the power of appointing all of the subordinate administrative officers, subject to the approval of the council.

Gradually separate city executive departments were formed to take charge of the administrative work. In the very beginning the heads of these departments, like the council committees, were appointed by the council. Under both systems the responsibility for the executive business of the government was divided among a large number of officers, and could never exactly be located. The consequence was lack of efficiency and cohesion in the city administration. Worse still was the intrusion of the political parties in the city elections and city affairs.

"It was natural and inevitable, under such conditions, that political parties should grasp for the control of cities and villages and extend their party tests and spoils system methods over them. Nowhere else could parties so effectively organize, find so many subservient voters, grasp so much patronage, or so easily extort large sums of money and other spoils—in a space so small and easily dominated—as in cities. City party government which enforced party tests of opinion for all offices and places in the city service, was, therefore, quickly extended to every city and village, equally without consideration of its fitness and without resistance."<sup>81</sup> The influence of the political parties in municipal affairs increased with the expansion of municipal activities which made possible the increase in the number of positions in the city government available as rewards to the party workers. The increase of municipal activities and functions was mainly due to the growth of cities.

A marked tendency towards a rapid development of cities was seen everywhere during the first part of the nineteenth century. Indeed, the growth of large cities has been said to constitute the "greatest of all the problems of modern civilization."<sup>82</sup> "America forms no exception to the rule that population in civilized lands gravitates towards great centers. Though her immense agricultural development might have been expected to arrest this movement and divert population to the rural districts, such has not been the case."<sup>83</sup>

City life was practically unknown to the forefathers of this Republic. In the year when Washington was inaugurated the city of New York was an overgrown village of 33,000 population, about as large as the city of Cedar Rapids, Iowa, in 1910. Philadelphia had a population of 42,000; Boston, 18,000; and Baltimore, 13,000.<sup>84</sup> In fact, New York, Philadelphia, Boston, Baltimore, and Charleston were the only cities in 1790 having a population in excess of 8,000.<sup>85</sup>

The opening of the nineteenth century marked the beginning of a new era in the growth of urban population. In the first few decades, "there opened the era of canals, followed closely by the era of railways, which not only built up great commercial centers, but stimulated the industrial cities by immensely extending their markets. The rate of increase goes up from thirty-three [percentage rate of increase of the urban population as compared with the general rate], the country's average in 1810-20, to eighty-two, two and one-half times the country's average in 1820-30."<sup>86</sup> The opening of the Erie Canal in 1821 was responsible for the rapid expansion of the commercial centers in New York State. About the same time the expansion of manufacturers in the New England States caused a considerable concentration of population there. The work begun by the canals was immediately followed in the decade from 1830 to 1840 by the activities in the construction of railways, and the cities grew apace, attaining their maximum rate in the decade from 1840 to 1850.<sup>87</sup>

The growth of cities was sure to be attended by the growth of the functions and activities of municipal government. The cities were now required to perform more functions and to render more services to their respective communities than ever before. In 1845 New York City organized the first disciplined police force in the country, and in the same year a paid fire brigade was established in the same city. In the next year Boston began the construction of the Cochituate water works; Chicago provided a municipal water supply in 1851; and Baltimore followed in 1854. In New York, Philadelphia, and Baltimore large public park systems were established. The rapid expansion of municipal activities was manifested in almost all the cities.<sup>88</sup>

With the rapid growth of the cities and the development of municipal functions on the one hand, and with the entrance into municipal government of political parties which aimed at the control of the entire governmental machinery so as to increase their power in the State and nation on the other hand, important changes were introduced into the system of municipal government as it existed in 1850. The result was the advent of a new period in the development of American municipal organization which was mainly characterized by the growth of special legislation, the decline of the power of the council, and the establishment of the board system.

The cities in this country were, up to that time, mostly created by special charters.<sup>89</sup> The special charter is in its nature a special grant to a particular local area for the purpose of conferring certain powers and imposing certain duties. The demands of each community are, as a rule, carefully considered by the charter-granting authority and the scope of the powers granted is usually in accordance with the needs of the particular locality at that particular time. These grants of powers are usually enumerated in great detail and, though suited to the needs of the city at the time when the charter was granted, could not be satisfactory for all time. The industrial and economic conditions of the city are such that the enlargement and increase of municipal activities and functions are necessary and inevitable. Thus, even in colonial times cities often found their grant of powers to be insufficient, especially in the matter of finances, and there was frequently application to colonial legislatures for the extension of charter powers.<sup>90</sup>

The rapid growth of the urban population in the nineteenth century and the corresponding increase in municipal activities were invariably forcing the city to apply continually to the legislature for new powers to perform the new functions. As a consequence, "the special statutes providing for the extension of municipal action entered into greater and still greater detail of means and method, thus depriving the municipal councils of their main functions of a legislative character, and making the State legislatures the real policy-determining power for the cities."<sup>91</sup> The constitutional provisions protecting the city

against the interference of the legislature were especially few in the earlier State constitutions; and the State was in most cases prone to take advantage of the unprotected position of the municipalities, and to interfere in matters which were purely local in character and might be better regulated by the municipalities themselves."<sup>8</sup>

The State legislature, beginning about the middle of the nineteenth century, not only made the charters of the cities and amended them from time to time, but frequently interfered with minor details in the administration of the cities by creating new boards wholly or partially independent of the councils. Thus, the so-called board system was inaugurated.

Although the transfer of power over the city administration from the city council to independent boards under the control, directly or indirectly, of the State authorities was to a considerable degree partisan, the council itself was also responsible to a certain extent for such a change. Before the close of the middle of the nineteenth century, the inefficiency of the American municipal council became very marked. The council had discredited itself before the people. As Matthews said in 1895, "A distrust of municipal legislatures and of the incapacity of their committees to conduct the executive business of a city government has been the chief feature of municipal development in this country during the past thirty years."<sup>9</sup> Thus, the State legislature, partly for partisan purposes and partly voicing a popular distrust of the city council, finally determined to take away from the council the power to organize the executive departments and to appoint the heads of these departments and other municipal officers. The legislature itself assumed the power to determine what executive departments should exist and how the heads of these departments should be appointed. The beginnings of such a tendency are to be found in the New York charter of 1849.

The fundamental feature of the New York charter of 1849, which was enacted by the legislature and accepted by the people on a referendum vote, was the establishment of independent administrative departments and the almost complete removal of executive power from the council. The charter expressly for-

bade the common council, or any committee or member thereof, to "perform any executive business whatever," and such business was vested in the newly created departments, the heads of which were chosen by popular vote for a three year term.<sup>94</sup> The purpose of applying the theory of the separation of powers to municipal government, which had been attempted in various previous charters, was thus completely carried out. The divorcing of the administrative arm of city government from the legislative was complete in this New York charter of 1849.

But the New York charter of 1849 in creating the independent administrative departments was not the only exponent of such an idea. Cleveland, Chicago, Detroit, Philadelphia, and many other cities furnished like examples in the decade which followed. In Cleveland the general act of 1852 provided for the popular election for terms of two years of the mayor, city marshal, civil engineer, fire engineer, treasurer, auditor, solicitor, police judge, and superintendent of markets. The board of waterworks trustees and three city commissioners were elected for three years.<sup>95</sup>

The Chicago charter of 1851 extended the list of elective officers to include the mayor, city marshal, treasurer, collector, surveyor, attorney, chief and two assistant engineers, two aldermen from each ward, a police constable, and a street commissioner, and other officers from each division. The tendency to enlarge the executive power in this charter was another instance indicating the movement away from administration by the council. The mayor was now made responsible for the proper enforcement of the laws of the State and the ordinances of the council. He was "required to give information, from time to time, to the council and recommend such measures for its consideration as the demand of the administration might require. He was no longer a perfunctory signing officer, but the important weapon of the veto made him a factor to be reckoned with in municipal administration." Furthermore, under this charter the appointment of the committees was transferred from the council to the mayor. With this change the mayor became at once a controlling factor in shaping the policy of legislation.<sup>96</sup>

The Detroit charter of 1857, though not curtailing to a great extent the powers of the council, did provide eight charter officers to be elected by the city at large and several more by each ward.<sup>97</sup>

The charter of Philadelphia enacted in 1854,<sup>98</sup> and the revised charter of Boston obtained in the same year,<sup>99</sup> though not taking any aggressive step in curtailing the powers of the council, did grant to the mayor the veto power over the acts or ordinances of the council.

An examination of the charters of this period will show that the general tendency of municipal development, beginning about the middle of the nineteenth century, was away from the council type of city government, and that almost in every charter provision was made either to increase the powers of the mayor or to create independent boards to take charge of the administration of the city. The heads of these newly created departments were usually elected by the people during the time when the dictates of democracy were everywhere coming to prevail.

But the system of popular election of administrative heads was soon found to be unsatisfactory because efficient heads for the various administrative branches of the city service could not be secured in that way. Thus, a change in the method of selecting the departmental heads was demanded. But wherever such a change was made, the old method of appointment by the council was nowhere restored. The power to select these officials was taken from the voters and given to the mayor in the most important cities, with the restriction that his appointment should be subject to the confirmation of the council. New York made the change in 1857 when the general charter law passed in that year made all the department heads, except the comptroller and city counsel, appointive by the mayor with the confirmation of the aldermen.<sup>100</sup> Chicago and Baltimore followed suit within a year or two. These changes were intended to strengthen the personal relation between the mayor and those who had charge of the work of administration. "The idea of making the mayor responsible for the appointment of a municipal cabinet comprising the heads of the various departments soon gained popularity, partly because it seemed in consonance with the general

plan of American government as exemplified in the larger areas of state and nation, and partly because the people of the cities were beginning to look upon the mayor as the pivotal figure in local administration. Indeed, the decline of popular confidence in city councils and the increasing confidence in the chief magistrate form the outstanding features of this period."<sup>101</sup>

But the transition from the irresponsible and independent board system to the responsible mayor system was not so easy of accomplishment as seemed at first sight. The State legislature would not willingly relinquish its control. No sooner had the board system been adopted and the attack on the custom of choosing all the chief executive officers directly by the people commenced, than the State legislature perceived an opportunity of tightening the reins of State control over city administration by providing for the State appointment of the members of these boards. Such interventions, marking the highest degree of legislative control over municipalities, occurred in several States during the late fifties.

The first State which took such action was New York. In 1857 the Republicans inaugurated the policy of placing some of the most important local departments of New York City under the control of legislative commissions. A State park commission for New York City and a State metropolitan police board for New York, Brooklyn, and adjoining counties were established. The State park commission consisted of seven members, named by the legislature and given exclusive power over the administration of the parks. They were given power to "require the city even to issue bonds in such amounts as they saw fit, subject only to limitations set by the act."<sup>102</sup> "State control of the police departments was deemed specially desirable because of the real danger from disloyal disturbances, as well as of the important influence exerted by the police in elections."<sup>103</sup> In order to accomplish such a purpose within constitutional bounds, a metropolitan police district, comprising the counties of New York, Kings, Westchester, and Richmond, was created; and the management of this district was put in the hands of a board consisting of the mayors of New York and Brooklyn and five commissioners appointed by the Governor. By a subsequent act

the local influence on the board was entirely removed and the commission was reduced to three members to be appointed by the Governor. Then, the "metropolitan fire department" and the "metropolitan board of health" were established in 1865 and 1866 respectively.<sup>104</sup>

The attitude taken by the New York legislature towards the city of New York was not the exception but rather the rule. In 1860 the legislature of Maryland, under the excuse of the disorder brought about by the political excesses of the Know-Nothing rule in Baltimore, transferred the control of the local police from the city to a State board of police commissioners.<sup>105</sup> By the police act of 1861 the legislature of Illinois re-organized the police force of Chicago and placed it under a board, the first members of which were appointed by the Governor.<sup>106</sup> In 1865 the board of metropolitan police, consisting of four commissioners to be appointed by the Governor with the advice and consent of the Senate, was established by the city of Detroit.<sup>107</sup> In the following year the Cleveland police was, in like manner, placed under a State commission to be composed of the mayor *ex officio* and four members appointed by the Governor.<sup>108</sup> In Pennsylvania the act of 1870 created a public buildings commission to have charge of the erection of municipal buildings for Philadelphia.<sup>109</sup> Instances of this kind could be multiplied, but the illustrations already given will be sufficient in this connection.

In all the cases cited above the boards or commissions enjoyed almost complete control over their departments. They not only directed their administration, but determined the policy without reference to the wishes of the city. In some extreme instances the commissions, like the Philadelphia public buildings commission and others, could even call upon the council to levy an annual tax sufficient to meet their annual expenses.

"This system of government of municipalities by legislative commissions was enacted on the score of mismanagement and mal-administration on the part of the local authorities; and in many cases such charges had no small foundation in fact, so that the situation justified some form of state control. It is by no means clear, however, that the method of control provided did



secure an impartial and effective check of wrong-doing; while it is certain that the prevailing motives for the measures taken were too often partisan in character, and that the administration of the state commissions was in consequence directed as much toward securing party advantage as efficient government."<sup>110</sup>

The effect of the board system on the municipal administration was thus very unfortunate, carrying irresponsibility to the extreme. Conflicts between the authorities were frequent because there was no clear demarcation of functions between the different boards. Responsibility was scattered and difficult if not impossible of location; and even if located, it was still more difficult to correct evils which might arise, for the members of the boards were not elected, but appointed by the leaders of the political party which was then in power in the State legislature. In short, the introduction of this system meant the disorganization of municipal administration.

Municipal conditions during the Civil War period seem to have been very discouraging. Indeed, toward the close of the war, conditions in the important cities were almost incurably bad. Antiquated organization, special legislation, and constant interference of political parties all worked together to cause municipal affairs to go from bad to worse. This was the period when the notorious Tweed Ring, described as "a troop of plundering banditti who used their civic authority to turn public funds into private fortunes,"<sup>111</sup> was in ascendancy in the metropolitan city; and the situation in other cities was scarcely better. To be sure, changes in city government had been made at times, even before the war period, but they had been the work of politicians or of some spasmodic effort for reform by the people.

The problems of municipal government in this country seem not to have been adequately studied before 1870; nor had the significance of the new conditions produced by the large aggregation of urban population been grasped by the people up to that time.<sup>112</sup> Everywhere such problems were met in a haphazard way. No State or national policy in relation to cities had yet been developed. One could often find in a single State as many forms of city government as there were cities; and

these forms were simply "a sort of volunteer crop from the state and national systems", which were accepted simply because they were the most available and easily understood.<sup>113</sup>

But about 1870 the people of the United States seemed to have awakened to the dangers of the situation. The evils of special legislation and the unsatisfactory workings of the board system had become so clear that organized efforts in the interest of municipal reform appeared. At first the movement against legislative control in the form of constitutional prohibition gained ground. The legislatures had so abused their power over municipalities that popular sentiment began to protest against their action even as early as 1851, when Ohio and Virginia established constitutional prohibitions against special legislation. Iowa and Kansas included such provisions in their constitutions before 1860.<sup>114</sup> But after the war, either due to the calmer tone of national politics after the heated strife over slavery and the war or to the inevitable revulsion from the extreme measures of the previous decades, the movement against partisan and special legislation for cities gained much headway.

Thus, immediately following the war a number of States inserted into their constitutions prohibitions against special legislation in the matter of municipalities.<sup>115</sup> This disposition to insert checks upon legislative interference with local administration became so marked from this period on that whenever State constitutions were revised, some such provisions were invariably inserted. As Professor Munro says: "During the last fifty or sixty years this tendency has grown even stronger, until it has nowadays come to be taken for granted that, whenever a state adopts a new constitution or revises an old one, it will almost certainly use the opportunity to insert various restrictive clauses relating to legislative freedom in matters of local government."<sup>116</sup>

Side by side with the movement for constitutional limitation upon special legislation concerning municipalities, there was a movement on foot, beginning in the decade from 1870 to 1880, to re-organize the machinery of city government. The changes brought about by the new charters enacted in this and the following decades ushered in a new period in the development

of American municipal organization, and this period may be characterized as the period of the "Mayor System."

The trend of thought during the last quarter of the nineteenth century was towards the concentration of power and the centralization of responsibility. The great evil of the board system of the previous period was the well-nigh absolute independence and irresponsibility of the executive departments. Under this system the mayor had practically no control over the administration, while the council had practically no power as regards appointments and appropriations. The absence of responsibility regarding city administration was especially fatal during the period of the rapid growth of cities which followed the war. About 1880 the people of the United States seemed to have been aroused to the fact that "the board system did not work satisfactorily; that it diffused responsibility for municipal action; that it made it impossible for the people, at any given municipal election, to exercise any appreciable control over the municipal government, and that it offered a continual temptation to the legislature to interfere in the affairs of the city."<sup>117</sup> Consequently, changes in municipal organization were made in the direction of decreasing the number of the irresponsible and independent boards of the previous period and of placing in the hands of the mayor a large part of the authority and responsibility by granting to him the power to select the administrative heads. Thus, the board system was superseded by the mayor system.

Brooklyn was the first city of any importance to concentrate authority and responsibility in the mayor. In 1882 the revised charter of Brooklyn vested in the mayor the right, within twenty days after assuming office, to appoint the new heads of the departments.<sup>118</sup> A year previous to that time the New York Senate investigating committee recommended that the mayor of the city of New York be granted the sole power of appointment and removal, without action of the council or Governor. But it was only in 1896 that the city of New York followed the example furnished by Brooklyn, and vested in the mayor the power to remove summarily any department head within six months after taking office.<sup>119</sup>

The new charter of Boston, granted in 1885, vested in the mayor the power to appoint, subject to confirmation by the board of aldermen, all officers and boards previously elected by the city council or the aldermen. The power of removing any such officer was also given "for such cause as he [the mayor] shall deem sufficient and shall assign in his order of removal". Furthermore, the charter provided that "the executive power of said city, and all the executive powers now vested in the board of aldermen as such, as surveyors of highways, county commissioners or otherwise, shall be and hereby are vested in the mayor to be exercised through the several officers and boards of the city in their respective departments under his general supervision and control."<sup>120</sup>

The Cleveland charter of 1891 unified completely the administration of the city under the mayor. He was now given the power to appoint the heads of the six newly established departments. He was also given the absolute power to remove the department heads and his other appointees.<sup>121</sup>

Illustrations may be multiplied to indicate the changed position of the mayor in a number of cities—particularly the large cities—the governments of which have often been characterized as presenting the "Mayor System" or the "Federal Plan". The essential features of this system may be briefly summarized. In the first place, the power to appoint most of the important municipal officers is vested in the mayor, instead of in the council as previously was the case. Secondly, the mayor becomes an executive officer in fact as well as in name and is now held responsible for the conduct of the subordinate officers. Thirdly, the mayor is given the power to carry out his policy through the right to remove any incompetent officer. Finally, the council is deprived of all executive power and is now made a purely legislative body.

Thus, in the history of American municipal organization from the petty colonial boroughs in the seventeenth and eighteenth centuries to the metropolitan cities at the end of the nineteenth century may be observed the general tendency to evolve from the simple and unorganized colonial council government, through the practically supreme council government during the early

part of the last century and the complicated irresponsible board system of the sixties and seventies, to the "one-man-rule" of the mayor in some cities at the end of the nineteenth century.

Under the first charters of most of the cities the mayor was no more than the presiding officer of the council, in which was vested practically all the powers the municipality could exercise. The idea of giving any single individual considerable power received no favor at the hands of men whose memory was still filled with the tyrannical acts of the colonial Governors, and at the time when the distrust of the executive was the prevailing sentiment. The powers of the early councils were not very minutely enumerated. Liberal privileges were frequently granted and exercised. The mayor was in most cases subservient to the council, which performed the executive business through executive officers, boards, or committees of its own creation. The predominance of the council was then the chief characteristic of the first period which ended about the middle of the nineteenth century.

Gradually, through the inability and incompetency of the council to satisfactorily provide for the growing activities and functions of the municipalities, the people began to distrust the bodies to which they had formerly granted liberal powers. Complaints of incompetency and even of corruption of the municipal councils gradually increased both in number and vehemence, and relief from these evils was eagerly sought from various quarters. At first, appeal was made to the State legislatures for protection against the councils. The consequence was legislative interference in local affairs and the establishment of the independent administrative boards which characterized municipal organization in this country during the period of the Civil War and the Reconstruction. But the irresponsibility and confusion resulting from this ill-devised board system was very disastrous—even more so than the council system. Re-organization was again demanded during the seventies and eighties; and this time the strong executive of the national government was suggested as the pattern of a new system of municipal government. This suggestion was followed to some extent, and the mayor system or federal plan was accordingly evolved in some

cities before the close of the century. Centralization of power was thus obtained; but it resulted from necessity, not from choice.

The movement for good city government which began in the last quarter of the nineteenth century had produced a ferment in a thousand active minds and stirred a thousand progressive men and women to courageous action. During the last decade of the century there came the dawn of a brighter day and the indications of a more rapid and substantial improvement in municipal government. In January, 1894, the first national conference for good city government was held in Philadelphia, Pennsylvania. In May of the same year the National Municipal League was organized in New York City. Since then there have been annual national conferences and annual meetings of the league held in different places. The mere fact of being able to hold a number of large, well-attended and representative meetings from time to time, all discussing the same subject, is of itself a convincing proof of the deep and widespread interest in the question of municipal government. But such evidences become of secondary importance when there is taken into consideration the great and unprecedented progress of the organized municipal reform efforts and the constantly increasing discussion of reform movements in all the leading newspapers of the country.<sup>122</sup>

The efforts of the reformers, as has already been pointed out, were directed along two clearly defined lines—re-organization and home rule. Home rule for cities attempts to define and distinguish clearly State and local functions and to secure municipal freedom in so far as the carrying out of the local functions by the local authority is concerned; while the movement for re-organization has as its goal the improvement of the mechanism of the government so that economy and efficiency can be secured in various phases of municipal administration, and authority and responsibility can be clearly located. Both phases of the reform movement had already gained considerable favor in different parts of the country before the close of the last century.

In the matter of home rule there were four States<sup>122</sup> which, prior to 1900, incorporated into their respective constitutions provisions granting to certain classes of cities the right to frame their own charters. In the matter of re-organization there were incorporated into the charters of some cities features like the merit system in appointment, the abolition of the two-chambered council, and the abolition of the aldermen's check upon the mayor's appointing power. All these changes were aimed at the simplification of the machinery of government and the definite location of responsibility and authority. Thus, before the close of the nineteenth century considerable improvement had already been achieved in the field of municipal government, both in its relation to the State legislature and in its internal organization; and the way had been well paved for further developments.

But the "real renaissance in American city government" did not come until the beginning of the twentieth century, when Galveston made the first experiment in 1901, by applying to its city government what has since been known as the "Commission Plan". The commission plan is but a phase of the general tendency towards the centralization of powers in a certain definite person or persons. The advent of this new system marks the climax of the well-defined movement against the cumbrousness of municipal government—a movement which was first manifested in the last quarter of the nineteenth century when attempts were made in various cities to concentrate power and responsibility in the mayor and to simplify the organization of municipal government in one way or another.

### III

## ORIGIN OF THE COMMISSION PLAN OF CITY GOVERNMENT

#### EARLY PRECEDENTS

The commission plan of city government, though popularly regarded as being created by the city of Galveston to meet a special emergency, is by no means in its essential principles an innovation of this century. As a matter of fact it turns out that its creators, unconsciously perhaps,<sup>184</sup> followed precedents that had long been established. The old colonial system of borough government, the New England town government, the government of the national capital since 1878, the system of county government, and the plan of appointing commissioners to manage their municipal affairs in time of emergency adopted by various cities are all in some very important respect similar to the plan initiated sixteen years ago by the Texas city on the gulf and since then copied throughout the whole United States. Indeed, the commission form of city government is a return, as President Goodnow has rightly pointed out, to "the original plan of city government in the United States in that it concentrates all powers administrative and legislative in one authority."<sup>185</sup>

The analogies between the commission plan and the system of New England town government are especially striking in certain respects. The board of townsmen or selectmen closely resemble the board of commissioners in cities operating under the commission plan. Like the commissioners, the selectmen constituted "a committee, from three to thirteen in number, annually chosen by the inhabitants to order their prudential affairs." The selectmen were a "responsible board, acting under the 'instructions' of the town-meeting, and accountable to that body for their acts,"<sup>186</sup> just as the commissioners are responsible to the electorate for the administration of the city government. Under the system of town government there was



no differentiation of legislative functions from those of administrative, since "as the town representative a vast number of functions devolved upon the selectmen. Nearly every kind of business that could be transacted by the town-meeting itself. . . . was constantly performed by them."<sup>127</sup>

The government of the city of Washington, D. C., has been permanently vested in a board of three commissioners since 1878. Two of them are appointed from civil life by the President, acting by and with the advice and consent of the Senate, and the third commissioner is similarly chosen from the corps of engineers of the United States army. This board of commissioners is "at the head of the administrative organization of the District of Columbia and exercises general supervision over all departments of the District government", and at the same time has been vested by Congress with the exercise of extensive powers of legislation with reference to matters of local interest.<sup>128</sup>

In the same way the county governments in the country have for a long time been vested in boards of commissioners or of supervisors, which exercise legislative as well as administrative powers and in some cases judicial powers.<sup>129</sup>

Nor are there lacking instances of scattered experiments of the commission form as applied to city government before 1901, when Galveston began to put this form into a definite shape. In 1863 Sacramento received a charter which placed the government in the hands of a governing board called the "Board of Trustees", composed of three elected members entitled the first, second, and third trustee, respectively. Each trustee was placed in charge of a particular department, just as is the case with the commissioners of the present time. The first trustee was president of the board of trustees and the general executive officer of the city. The second trustee was made commissioner of streets; and the third trustee was superintendent of water-works. This plan worked very satisfactorily, but was not favored by the politicians who tried to modify the system by creating from time to time, through the legislature, new boards and officers to take charge of various phases of the administration. As a consequence, the board of trustees was practically deprived

of all administrative power and became a legislative body. Finally, the common council system with the mayor and councilmen was restored to its former position in 1893.<sup>120</sup>

In 1870 New Orleans had received a charter of practically the same nature as that of Galveston in 1901. Indeed, one writer has even gone so far as to say that the Galveston charter was a duplication of the charter adopted by the city of New Orleans.<sup>121</sup> The act passed in 1870 by the legislature of Louisiana for the city of New Orleans adopted what was generally known as the "Administrative System", which differs from the commission form only in name. By its provisions the government of the municipality was vested in a mayor and seven administrators. They possessed, in the first place, administrative and executive functions; and each of them, with the exception of the mayor, was charged with the administration of a particular branch, just as are the commissioners in the present commission governed cities. Secondly, the mayor and the administrators in a collective capacity formed the council which should exercise legislative power for local purposes. "A small and compact body, its meetings were as business-like as those of a bank directory."<sup>122</sup>

But the administrative system was short-lived, because it was claimed by the opponents of the system that the council under the charter was too small and could be too easily controlled in the interests of private or corporate gain. The pressure for the abolition of this system was not easy to be resisted; and the legislature yielded in June, 1882, by enacting a new charter for New Orleans, which restored the orthodox type of government by a mayor and council.<sup>123</sup>

Mobile was the next city which resorted to the system of government by commission. Following the panic of 1873 Mobile was practically on the point of bankruptcy: the condition of the city government was deplorable. By an act of February 11, 1879, the State legislature annulled the charter of Mobile and put an end to the corporate life of the city. Three commissioners were appointed to take charge of the assets of the city and to liquidate its debts. They were "authorized to discharge their duties under the direction of the Court of Chancery: to adjust,

compound, and compromise all debts and demands, including taxes past due; to report the results of their work to the governor, and to draft a legislative bill to effect the settlement they deemed advisable." By a second act there was incorporated the "Port of Mobile", the government of which was vested in a body styled the "Mobile Police Board", consisting of eight commissioners, all chosen by wards. The functions of this board were to preserve the peace, protect the health of the people, take care of the streets, and provide against fire. In exercising these functions the commissioners were empowered to pass laws and ordinances and to levy taxes. Thus, there was a system of government by two commissions, one appointive and the other elective. This system continued until 1887 when the usual American type of city government was restored.<sup>134</sup>

Another early instance of city government by commission is found in the city of Memphis, Tennessee, during the period between 1879 and 1891. Memphis, following the severe epidemic of yellow fever in 1878, was in a condition no better than that of Galveston following the storm of 1900. The city had incurred debts to the extent of its authority to borrow money, and its financial condition was deplorable. In order to improve such conditions the legislature of Tennessee in 1879 abolished the municipal corporation of Memphis as such, and created in its stead the "taxing district of Shelby County", whose affairs were conducted by the board of public works of five members and a governing council of three. Under this form of government, the conditions of the city, sanitary and otherwise, were greatly improved. After normal conditions and prosperity returned, this new system was abolished and the old plan restored in 1891.<sup>135</sup>

In all of these early instances of experiments with the commission form of city government during the latter part of the nineteenth century the system was regarded merely as a temporary expedient, and as soon as the emergency calling it forth had been passed the old system was immediately restored. Thus, no noticeable effect was produced by these scattered instances on the trend of American municipal government. The task of definitely and permanently incorporating and crystalliz-

ing the commission form into a popular system of American municipal government was left to the city of Galveston.

Like the early instances of experiments with the commission government, the new plan adopted by Galveston was also called forth by an emergency and was also regarded merely as a temporary measure at the time of its installation. But unlike the early experiments, which were usually unnoticed by people outside of their own cities, the system inaugurated by Galveston attracted a great deal of attention in all parts of the country and ushered in a new era in the history of American municipal government.

Galveston drafted its new charter and put the new system into operation just at the time when civic interest was at its highest point. Popular dissatisfaction with the complicated and irresponsible system of city government was being manifested everywhere, and the tendency to concentrate power and responsibility in the office of mayor was clearly seen in the large cities during the last quarter of the nineteenth century. The distrust of the council was further reflected in various attempts to deprive that body of powers that it still possessed, especially on the financial side, and to vest the same in administrative officers.<sup>136</sup>

Experiments of various kinds of administration had been tried in some cities and for some time; but on the whole the people had not yet developed a definite policy. They clearly understood that simplification was the task that awaited them without knowing the way to secure that simplification. They had up to the beginning of the twentieth century tried to simplify the machinery of the city government by abolishing the independent administrative boards and by concentrating the powers in the hands of the mayor; but up to that time no one had ever dared to bring forth a proposal to abolish the cherished idea of the separation of powers in city government. Consequently no attempt had ever been made to urge a complete re-organization of the whole municipal structure on the basis of simplification. The traditional separation of legislative and administrative powers was too deep-rooted in the minds of people in this country, and any

proposal to abolish it had been deemed an "unsafe exposure to too great temptation, to permit the same body of men who are to disburse the public funds also to have a free hand in determining how large that sum shall be."<sup>137</sup> Indeed, even in Galveston the new system, when it was first installed, was regarded merely as a temporary measure to tide over the crisis. Even the lawyers who drew up the Galveston charter could scarcely have been aware of the fact that they had devised a system of government which would within a short time revolutionize the whole municipal structure of hundreds of American cities.

Gradually the people outside of Galveston realized the fact that in Galveston was to be found the system of city government for which they had long been looking. But no city dared to put it on trial under normal conditions; nor had it been tried successfully in other places. At first, this system was watched very carefully by people outside of Galveston. Up to 1906, five years after its adoption by Galveston, only one other city, Houston, had taken up the plan. But when once the superiority of the system had been proved, or was supposed to have been proved in actual operation, it spread very rapidly. With the inauguration of the so-called "Des Moines Plan", the commission form of government began to play an important rôle in the evolution of city government in this country. The widespread use of this system following the passage of the Iowa law has become "the most conspicuous single development of recent years in the realm of American municipal affairs".<sup>138</sup> The cities now adopted the commission system, not for the purpose of meeting an emergency, but to establish an entirely different principle of municipal organization.

For these reasons the honor of inaugurating the commission form of city government has been rightly attributed to the city of Galveston, despite the fact that this system is by no means a new one and that the early precedents may have played a considerable part in shaping the Galveston charter drafted in 1901. The conditions in Galveston leading up to the adoption of this system and the fundamental features thereof may now be examined.

## THE GALVESTON PLAN

Before 1901 Galveston, which was governed by a mayor and twelve aldermen elected by the people, had been characterized as "one of the worst-governed urban communities in the whole country", and its municipal history has been said to "afford illustrations of almost every vice in local government."<sup>139</sup> The finances of the city had been badly managed and the city authorities "had fallen into the disastrous practice of bonding the city to provide for annual deficits. In less than twenty years nearly three millions of debt had been accumulated in this way alone."<sup>140</sup> The administration other than financial was equally bad, if not worse. "City departments were managed wastefully; spoilsmen were put into places of honor and profit in the city's service."<sup>141</sup>

Such was the character of the city government when on September 8, 1900, a fierce storm forced a tidal wave from the gulf over the city, destroying a large portion of it and killing between five and six thousand people. The whole organization of the city was demoralized and chaos reigned everywhere. But the existing city government, incompetent and even dishonest, was utterly helpless in a great catastrophe like this. "Not only did this city government demonstrate its total incompetency to handle the city in its ruined condition, but it really seemed as if disaster had added to the usual incompetency, corruption, grafting, wastefulness of the city's resources, sinecurism and conditions of general scandal."<sup>142</sup>

It was under such conditions that the Deepwater Committee, an organization of business men previously formed for the improvement of the harbor, took up the matter and determined to put an end to the scandalous state of affairs and to restore the city's financial stability, as well as peace and order. A subcommittee consisting of three members—Messrs. R. Waverly Smith, Walter Gresham, and F. D. Minor—was appointed to draw up a new charter for the stricken city.<sup>143</sup> For two months these three members met every evening and discussed the probable features of a new form of city government. They were aware of the fact that "it would be impossible to redeem Galveston under the old form of government and that it was

indispensable to get a much simpler form, and one that would offer to the votes of the people only a small number of elective officers.'"<sup>144</sup> Finally, a new charter was drawn, and after obtaining the coöperation of a large number of people both in and out of the State legislature, the finished work was introduced in the form of a bill. At the same time an address to the people was issued justifying the radical change in the government which the committee proposed to introduce. Part of the address may be quoted here to show the exact attitude of the committee towards the whole situation.

We believe that municipal government, as it has been administered in this community for the past twenty years, is a failure. It did not require the storm to bring a realization of this fact, but it brought it home with greater force upon us. We are seeking relief from the municipal destruction and despair staring us in the face. It is a question with us of civic life or death. This committee has labored diligently and earnestly to prepare and present to the people of this city, and to the legislature, remedial legislation adequate for the grave emergency confronting us. Months have been given to its preparation. It is hoped that the central idea of this new charter—that of a commission—embodies the practical solution of that hitherto unsolved problem: how to govern, cheaply and well, a municipal corporation. We are asking for a charter, placing the entire control of the local government in the hands of five commissioners, designed to benefit the people rather than to provide sinecures for politicians.<sup>145</sup>

Favorable action from the legislature was secured and the bill entitled "An Act to incorporate the city of Galveston and to grant it a new charter and repeal all pre-existing charters", was duly passed. On April 19, 1901, the Governor's signature was secured and the proposed bill became a law.<sup>146</sup>

The act of 1901, as its title indicates, abolished the old municipal framework, root and branch, and established an entirely new system. Originally the framers of the new charter favored turning over the entire administration of the city to a commission appointed by the Governor, on the theory that skilled and responsible administrators could only be chosen by some intelligent authority and not by the blind chances of a popular election. But the suggestion of disfranchisement was not favored by the majority of the legislators and citizens, even under such serious conditions as those confronting Galveston in 1900-

1901. Some members of the legislature openly declared that they would under no circumstances support the bill which proposed to deprive the people of their rights, as a matter of public policy.<sup>147</sup> The result was the compromise embodied in the act, which placed the government of the city in the hands of five commissioners, three of whom were to be appointed by the Governor, while the other two were to be elected by the people. In so doing the framers still hoped that politics might be eliminated from the city government, as it was believed that the Governor would choose none but honest and efficient persons to be commissioners, and that the majority could be relied upon regardless of the other two, should the elected commissioners fall into the hands of corrupt politicians.<sup>148</sup>

On September 18, 1901, the new government was duly installed. "On taking charge, the commission government found an empty treasury, city without credit, employees paid in script which was subject to a large discount for cash, and floating indebtedness running back for several years. The personnel of the commission, together with the heads of the departments, inspired confidence, and the city was soon put on a cash basis, her credit restored so that it could go into the open market, buy supplies on the same terms and prices as our best merchants or wealthiest citizens, and the outstanding script was being taken up with our surplus cash as it accumulated in our treasury."<sup>149</sup> These are the words which appeared in a letter prepared by the first mayor-president and indicate the immediate results of the new system. Whether the words of the man who was at the head of the new system were conclusive or not, the fact remains that the results of the commission form of government met the expectation of its friends.

For a time the new system worked without friction, until a drayman by the name of Charles Lewis was convicted and fined twenty-five dollars in the recorder's court for violating a sanitary ordinance which prohibited the removal of the contents of any privy or water closet, except between certain hours, with permission of the health physician and in accordance with certain prescribed rules. The case was appealed to the criminal district court on the ground that the ordinance in question was



null and void because the Governor had no authority under the Constitution of the State to appoint the commissioners. The charter provision authorizing him to make these appointments, it was claimed, was null and void, and the ordinance in question with all its proceedings was, therefore, without authority of law. The verdict of the recorder was affirmed by the criminal district court; but the case was again appealed to the supreme criminal court of the State, which handed down its decision on March 25, 1903, holding a vote of two to one that the special charter granted to Galveston violated the principle of self-government embodied in the Constitution and hence an ordinance passed by the board of commissioners was void.<sup>150</sup>

But when the constitutionality of the new charter was taken into the supreme civil court for consideration a decision was handed down on June 26, 1903, three months after the decision of the supreme criminal court, to the effect that "the charter of the city of Galveston in conferring upon a president and board of commissioners, a majority appointed by the governor, the power of governing the city usually committed to a mayor and city council, was not void as violating article 6, section 3 of the constitution giving all qualified electors the right to vote for a mayor and all other elective officers; nor was it beyond the power of the legislature to enact such an act as being in derogation of an inherent right of local self-government by municipalities, arising, by implication, from history and tradition in this state."<sup>151</sup>

Thus, the commission charter was held to be constitutional in civil matters, but it did not confer police jurisdiction. Accordingly, an appeal was made to the legislature for an amendment to the charter eliminating the appointive feature. On March 30, 1903, an amendment was duly passed, making all the commissioners elective. An election for five commissioners under the new charter was immediately ordered and the result was the reelection of all the commissioners, including the three appointed by the Governor.<sup>152</sup>

The charter has been slightly modified by subsequent legislatures and by the recently adopted constitutional home rule amendment,<sup>153</sup> but the main features still remain. As at present

organized the government of the city of Galveston consists of a mayor and four commissioners, all elected by the qualified voters of the city for a term of two years. No direct primary, nomination by petition, or non-partisan election, is found in Galveston's charter, which simply provided that "the manner of holding the same [election] shall be governed by the laws of the State of Texas governing general elections." The mayor and the commissioners when elected, constitute the board of commissioners, which is the municipal government of the city.<sup>154</sup>

This board of commissioners is vested with the following powers, to be exercised by a majority vote of all members:

1. To "exercise all the rights, powers and duties of the Mayor and Board of Aldermen of cities as may be conferred by the Constitution and laws of this State."<sup>155</sup>

2. To "appoint all officers and subordinates in all departments of the said city."<sup>156</sup>

3. To "make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of all the departments of said city and whatever agencies may be created for the administration of its affairs."<sup>157</sup>

4. To make "all laws or ordinances not inconsistent with the Constitution and laws of this State, touching every object, matter and subject within the local government instituted by this Act."<sup>158</sup> Thus in this board of commissioners are vested all the powers which the city has the authority to exercise. Indeed, the charter expressly provides that "said Board of Commissioners shall constitute the municipal government of Galveston."<sup>159</sup>

The mayor is the president of the board and his official title is "Mayor-President of the Board of Commissioners for the city of Galveston".<sup>160</sup> He presides at all the meetings of the board and has the "right to vote as a member thereof on all questions which may rise".<sup>161</sup> But he has no veto power. He is the chief executive officer of the city, and as such, his chief function is to see that all the laws thereof are duly enforced.<sup>162</sup> The charter requires him to devote at least six hours a day to the duties of his office and to the affairs of the city.<sup>163</sup> He receives as com-

pensation for his service a salary of \$2000 per annum, while the salary for each of the commissioners is \$1200 per annum.

The administration of the city is divided into four departments: (1) police and fire; (2) streets and public property; (3) waterworks and sewerage; and (4) finance and revenue. The electors of Galveston do not choose candidates for the board of commissioners with reference to the particular department each of them is to direct, and theoretically at least the positions to be filled by the candidates for commissionerships are not known until after election when the board by a majority vote determines the department of which each member shall have charge. When assigned, the four commissioners are respectively known as the "Police and Fire Commissioner", the "Commissioner of Streets and Public Property", the "Waterworks and Sewerage Commissioner", and the "Commissioner of Finance and Revenue".<sup>164</sup> The "Mayor-President" is not assigned to any particular department of administration, but he is supposed to exercise a general supervisory power over all of them.

The commissioners are not required to devote their entire time to the service of the city, nor is there any definite amount of time prescribed as in the case of the mayor. As a rule only about two hours are devoted daily to the service of the city by each of the commissioners. Their duty is to supervise and to direct, but not to take over the actual management of the routine work of their respective departments. The actual routine work is performed by the superintendents, who are expert managers appointed by and responsible to the commissioners. By this plan the framers of the charter expected to secure for the city the services of the successful business men, who could devote a part of their time to the city without giving up their business pursuits.<sup>165</sup>

The board of commissioners also appoints the following officers enumerated in the charter: "a secretary, a treasurer, an attorney, a recorder or judge of the Corporation Court, an assessor and collector of taxes, a chief of police, a chief of the fire department, an engineer who shall also be superintendent of streets, an auditor, a secretary of waterworks and sewerage departments, a harbor master, a sexton, a superintendent of waterworks and

sewerage, an engineer of the waterworks, an assistant engineer of the waterworks; and, if deemed necessary by the Board, an inspector of waterworks and sewerage plumbing, an assistant chief of police, and assistant chief of the fire department and an assistant city engineer."<sup>166</sup> All of these officers, with the exception of those in the police and fire departments, are named by the board on its own initiative. For the employees in the fire and police departments, the commissioner in charge prepares and presents to the board in writing his recommendations of persons for appointment, "based on the integrity of character and physical and intellectual capacities of the applicants for such positions". In preparing his list of recommendations, the police and fire commissioner is required to give preference to "those men who have proved themselves capable, good, and efficient in the performance of their duties". In case of a failure or refusal of the police and fire commissioner to make the necessary recommendations at the second regular meeting of the board after its induction into office, the board may proceed to select proper persons to fill such positions without his recommendations.<sup>167</sup>

Every appointee must "be at the time of his appointment a qualified voter in the city of Galveston". Appointees shall hold their offices for two years.<sup>168</sup> But the board of commissioners is empowered to "remove any officer for incompetency, inefficiency, corruption, mal-conduct, malfeasance, or non-feasance in office, or such other causes as may be prescribed by ordinance after due notice in writing [to the employee] and opportunity to be heard in his defence".<sup>169</sup> Any person can file with the president of the board charges against an officer for any or all the offences provided for, and it is the duty of the board to determine the truth of such charges. At the hearing the board constitutes a court and is vested with exclusive jurisdiction. Counsel may be employed both by the accused and by the board. "Upon the conclusion of the investigation and argument of the case, a vote shall be taken on such charge and specification", and in accordance with the vote of the majority the board shall give its judgment.<sup>170</sup> In this connection it may be noted that the members of the board of commissioners "may be removed for the same reasons and in the same manner as county officers".<sup>171</sup>

The duties of the different appointed officers are minutely prescribed in the charter; but the board is empowered "from time to time to require further and other duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers elected to any office under this Act whose duties are not herein specially mentioned and to fix their compensation when not herein fixed."<sup>173</sup> The board has also the power to require bonds to be given by all officers for the faithful performance of their duties, and to fill all vacancies when no other method is provided in the charter.

In order to give elasticity to the administration of municipal affairs, the framers of the charter gave the board the additional "authority from time to time to create and fill and discontinue offices and employments other than herein prescribed according to their judgment of the needs and requirements of the city, and in their discretion, by a majority vote of all the members of the Board; to remove, for or without cause, the incumbent of any such office or employment, and may, by order or otherwise, prescribe, limit or change the compensation of such officers or employees."<sup>174</sup> The only limitation on such discretionary power of the board is that "no salary shall exceed nine hundred (\$900.00) dollars per annum for any office or employment" thus created.<sup>174</sup>

In view of the fact that it was the deliberate intention of the framers of the Galveston charter to surrender local autonomy and to devise a strong centralized city government unhampered by the influences of the political boss, nothing except a few provisions relating to the publicity of the actions of the board is inserted into the charter to safeguard the concentration of too much power in so small a body. All the legislative sessions of the board, whether regular or special, are required to be open to the public. A public newspaper of the city must be designated as the official paper in which are to be published all ordinances, notices, and other matters of public interest. In this official paper the board must publish quarterly a statement "showing a full, clear and complete statement of all taxes and other revenues collected and expended during the preceding quarter, indicating the respective sources from which

the moneys are derived, and also indicating the disposition made thereof."<sup>175</sup>

Such, in brief, is the machinery of city government as set forth in the Galveston plan. The old system of mayor and aldermen has been entirely done away with and a new system of a mayor and four commissioners has been installed. The ward system of representation with its numerous evils and shortcomings has been discarded, and the unit for governmental purposes is now the city as a whole. The time-honored theory of the separation of powers which, when applied to city government, results in producing an irresponsible and unbusiness-like organization, and the fallacious idea of popular election of all the administrative officers, which results in the long ballot and blind-voting, are abolished root and branch. In place of these antiquated theories, there are now substituted sound principles, based on efficiency and simplicity, which have been proved successful in large private business corporations. The system as adopted by Galveston in 1901 confers power and responsibility on a few elected men who are conspicuously significant and important in the city government. All the other officers and superintendents of the departments are appointed by and responsible to them. Thus, harmony in administration is secured. The whole theory underlying the new system is that the city is to be regarded as a great business enterprise, the object of which is to secure the welfare of the community. It was this conception of the city as a business proposition which gave the Galveston experiment its first great vogue.

Of the success of the Galveston plan most writers have given emphatic and unqualified assurances. Mr. George Kibbe Turner, in an article published in the October number of *McClure's Magazine* in 1906, describes in great detail the government of Galveston and makes the following striking comparisons between the new and the old system of government:

The commission found the city bankrupt, it has raised its credit above par. It has saved Galveston one full third of her gross running expenses. The annual cost of the government of Galveston has averaged about \$650,000. In the four and a half years of commission government ending February 28, 1906, a saving of at least \$1,000,000—over \$220,000 a year—

had been made in comparison, not with the vicious period of the ward aldermen, but with the years of the general aldermen following 1895.

The government in the four and a half years preceding the Commission had incurred \$250,000 of debt for current running expenses; the new government incurred absolutely no debt for this purpose. The former government had had to its credit \$425,000 more in assessed taxes than the new one. After making allowance for the inefficiency of tax collection under the old régime, the Commission during its first four and a half years, had saved the city at least \$500,000, which it must have raised by taxes or added debt if the old administration had been in charge. In addition, the commission had saved \$500,000 more. Of this, \$200,000 was laid away by reducing the net debt by that amount, and \$300,000 was put into permanent improvements, which, if made at all, must certainly have been paid for by bonds if the former administration had been in charge. It might be objected that the slightly smaller population in the second period, under the commission, would call for smaller expenditures. But this is not true. The second period has called for larger outlays—for all kinds of repairs after the storm, and for the extension of the city's functions in every line, except possibly one—the fire department. And all this has been done under a slight average decrease in the tax rate.

These results have been secured by straight, careful business methods, such as any man would apply to his own affairs. Great pressure and ingenuity has been used to add to the sources of revenue. An additional \$30,000 has been secured in the four and a half years from a vehicle tax, not collected in the period before. Nearly \$60,000 has been secured from interest on city deposits, which, by an extraordinary piece of carelessness, was given over previously to the city treasurer. Some \$7,500 has been realized from taking over the costs which had formerly gone to the chief of police and the prosecuting attorney in the city court. The waterworks, at practically no increase in operating expenses, have yielded \$115,000 more. And when the streets were rebuilt, the street railway paid its share of them—a matter of \$40,000. Added to this is a comparative saving in the four years and a half of \$60,000 and \$40,000 in the police and fire departments, from a reduction in salaries and force, and nearly \$50,000 from the cheaper operation of the electric light department.<sup>100</sup>

#### THE HOUSTON PLAN

The success of Galveston under the commission plan of government attracted the attention of the city of Houston. But the conditions leading to the adoption of the new system in Houston were neither dramatic nor calamitous. In Houston there was no great catastrophe as there had been in Galveston; but, like many other cities in this country, the people had long suffered from the evils of the council-mayor system of government. Indeed,

the story of Houston up to 1905 was the story of all other American cities. It was a story of incompetency, of political graft, of corruption, and petty ward politics.

Houston was governed before 1905 by a mayor and a city council. The city was divided into six wards, from each of which two aldermen were chosen to sit in the council. Consequently, ward politicians dominated the municipal legislative body. Each alderman looked out for the interests of his particular ward even at the expense of the whole city, and the catchword for looting the city treasury was "local patriotism". Graft reigned supreme, and anybody who took a part in the city government, no matter what his position—policeman, fireman, judge, clerk, constable, or what not—was "out for graft". The city was in an extremely poor financial condition. It was burdened with a tremendous bonded indebtedness, as well as with a floating indebtedness of over \$400,000.<sup>177</sup> Taxes were collected and revenue was spent, but there were no tangible results. The better class of the citizens were convinced that a change in the form of government was necessary to improve the existing conditions, and they were ready for any kind of a change.<sup>178</sup> The situation was emphatically expressed by Mayor Rice when he said: "Debt after debt was being created and nothing to show for the moneys paid into the treasury. The people of Houston were in that frame of mind to accept any form or kind of change in their government, knowing full well that they could do nothing worse than to continue what they had."<sup>179</sup>

It was during such a state of affairs that some of the citizens of Houston observed the improved conditions in Galveston under the commission system. They felt that the Galveston plan might be adopted in the hope of redeeming their own city government from political rascality. A committee of investigation was appointed to study the actual working of the Galveston plan; and in its report the committee heartily endorsed the new idea and recommended that the Houston charter be amended. The commission plan was submitted to the voters on December 10, 1904, and though the number of people who expressed their opinion on that occasion was small, a great majority endorsed the



project.<sup>180</sup> Accordingly, a new charter embodying the general principles of the Galveston plan was submitted to the Twenty-ninth Legislative Assembly which met in 1905.

Despite the bitter and determined opposition of the old political ring, the legislature on March 18, 1905, granted the new charter in an act, the full title of which reads: "An Act to grant a new charter to the city of Houston, Harris County, Texas, repealing all laws or parts of laws in conflict herewith, and declaring an emergency". But it was found necessary at the same session of the legislature to amend certain sections of the charter so as to make provision for an election. On June 27, 1905, the first election under the new charter took place, and the officials elected began their duties on July 5, 1905.

The charter was again amended by the Thirty-second Legislative Assembly in 1911, and a separate article entitled "Street Improvements" was added. This amendment, however, was ratified by the voters of the city. By virtue of the constitutional home rule amendment adopted in 1912 and the enabling act passed in pursuance thereof by the Thirty-third Legislative Assembly in 1913, the voters of Houston amended the charter on October 15, 1913, in thirty-seven of its sections.<sup>181</sup>

Though the main features of the commission plan as exemplified in the Galveston charter were followed, the Houston charter was by no means a literal reproduction of the original plan: there were important features in the new charter which greatly modified the original plan and which put the Houston charter in a class by itself.

The administration of the city was vested by the charter in a mayor and four aldermen, who together constituted the city council. Both the mayor and the aldermen were elected by the qualified voters of the city at large and held office for two years. The 1913 amendment authorized the city council to pass "all necessary ordinances providing for and requiring the nomination of all candidates of any political party for elective officers . . . by preferential ballot".<sup>182</sup> Unlike the Galveston plan, the characteristic feature of the original Houston charter was the concentration of almost all the powers of administration in the hands of the mayor, upon whom was also placed direct re-

sponsibility co-extensive with his power. In fact, the four commissioners or aldermen according to the original plan acted simply as his assistants, although when acting together they exercised a check on the mayor's actions in a few specified matters, such as those relating to expenditure.<sup>183</sup>

Under the original charter the mayor of Houston occupied a predominant position and was the responsible head of the city government. The aldermen were not his colleagues as in the case of Galveston, but rather his subordinates in the sense that he alone was held primarily responsible for the success or failure of the government. The charter did not provide any administrative departments; but left them to be created by ordinance, authorizing, however, the mayor to appoint the heads thereof. For administrative purposes there were nominally four committees: on finance and revenue; on police and fire; on water, light and health; and on streets, bridges, and public grounds. Each of these committees consisted of one chairman and three other members. The mayor, subject to the confirmation of the four aldermen, assigned each of them to be chairman of a particular committee; and each chairman was nominally one of the members of all the other committees. The mayor himself was the ex-officio head of all the committees.<sup>184</sup>

But all these features were changed by one of the amendments adopted in 1913. The mayor now has no power to make assignments of the chairmen of committees, since each of the four commissioners to be elected at the regular city election must "designate the position for which he is a candidate and shall have his name placed on the official ballot as a candidate for the particular position which he seeks". The positions provided in the charter are as follows: Tax and Land Commissioner, Fire Commissioner, Street and Bridge Commissioner, and Water Commissioner.<sup>185</sup>

The mayor's powers in other respects, which were very extensive in the original charter, remain intact. In the first place, he has and exercises "such powers, prerogatives and authority, acting independently of or in concert with the city council, as are conferred by the provisions of this act, or as may be conferred upon him by the City Council, not inconsistent with the

general purposes and provisions of this charter".<sup>186</sup> He is a member of the city council, and as such he has a right to vote just as do the other aldermen; but in addition, he has a veto on "every ordinance, resolution or motion of the city council", and also on any or every item in ordinances or resolutions making appropriations. The council may pass measures over the mayor's veto by a majority vote, but the mayor has also a vote on questions of passing measures over his own veto.<sup>187</sup> It is his duty "from time to time to make such recommendations to the Council as he may deem to be for the welfare of the city, and on the second Monday of March of each year to submit to the Council the annual budget of the current expenses of the city for that fiscal year". Though the council may increase, reduce or omit each or any item of the budget, its action is always subject to the veto power of the mayor.<sup>188</sup> The mayor appoints and removes "all officers or employees in the service of the city for cause, whenever in his judgment the public interests demand",<sup>189</sup> and "any incumbent of any office, except the controller, may be removed at any time by the mayor, with or without the concurrence of the council."<sup>190</sup> By acting in concert with the other aldermen in the city council, he has the right to remove any one of the aldermen or the controller.<sup>191</sup>

The city council, which includes the mayor, has very extensive powers. In it the charter vests the full power and authority to exercise all powers conferred upon the city, subject to the mayor's veto.<sup>192</sup> The city council has the power "to establish any office that may in its opinion be necessary or expedient for the conduct of the city's business or government, and may fix its salary and define its duties".<sup>193</sup> It may also increase or diminish the compensation of all officers, except their own, and may "abolish entirely any office at any time, except as to the officers above mentioned."<sup>194</sup> By a majority vote of all the aldermen the city council may remove the mayor from office "in case of misconduct, inability or wilful neglect in the performance of the duties of his office".<sup>195</sup> In the same way, any one of the four aldermen may be removed.<sup>196</sup>

"For the purpose of conducting and transacting the ordinary business and administrative affairs of the city, the city council

shall be continuously in executive session, or open and ready to be convened therefor at any time, and at such hours as the Mayor may designate".<sup>197</sup> In this provision of the charter there is to be noticed a very marked departure of the Houston plan from that of Galveston. In Galveston, as has already been indicated, the commissioners are not required to devote their full time to the service of the city, and are not expected to be experts in the actual charge of the departmental work, but merely advisers or directors of the department whose function is only to determine the general policies. The distinction between policy-determining officials and administrative experts is clearly recognized in the Galveston plan, and in so doing the framers of the charter expect to secure the advices and services of successful business men in directing the general policies of the city administration.

Houston, on the other hand, by requiring the full time of its aldermen and requiring the election of commissioners to specific departments, makes no distinction between the policy-determining officials and administrative experts—which presupposes the election of experts to offices. The aldermen elected are not merely directors or supervisors of the departments as in the case of Galveston, but are actual superintendents of the detailed work of the departments. The question as to which form is the superior is one of the most interesting questions arising out of the operation of the commission plan of city government: there is much to be said on both sides.<sup>198</sup> Recent tendencies seem to be away from the popular election of the administrative experts, as this would impose on the people a task of the utmost delicacy—a task which "demanded intensive and intimate investigation, such as could be conducted only by a very few men".<sup>199</sup> Such a tendency is clearly seen in the recent development and spread of the commission-manager plan. In consideration of the full time devoted to the service of the city, the mayor and the aldermen receive much larger salaries than in Galveston: \$7500 per annum for the mayor and \$2400 for the aldermen.<sup>200</sup> Public council meetings are held each Monday at 4 P. M., but they are little more than a public ratification of those matters previously agreed upon by the council in ex-

ecutive session. The sessions are often short and entirely devoid of the features of the old council meeting.

Like the Galveston plan, there are specific provisions in the Houston charter intended to insure publicity. The council "shall sit with open doors; shall keep a journal of its own proceedings, which shall be public and constitute one of the archives of the city". On the passage of all ordinances or resolutions, the ayes and nays of the members shall be taken and entered upon the journal of its proceedings, and no ordinance or resolution can be passed on the same day on which it is introduced.<sup>201</sup>

As originally adopted the Houston charter contained no provisions for the initiative and recall; but provision was made in the original charter for a referendum on the granting of franchises and on bond issues. The charter requires any issue of bonds exceeding \$100,000 in any one year to be submitted to the voters, and to secure a majority vote before such debt can be created.<sup>202</sup> Any grant of franchises or special privileges must be submitted to the voters for approval upon petition of at least five hundred legally qualified voters.<sup>203</sup> Under the original charter the city was granted the right to "acquire its public utilities, such as gas, water and electric light works, and underground, surface and elevated street railways, subways, or underground conduit systems for electric light, power, telephone, telegraph and other wires used for the purpose of transmitting and electric service."<sup>204</sup> This power of the city to purchase and operate public utilities was greatly broadened by the home rule amendment of 1913.<sup>205</sup>

Moreover, the home rule amendment of 1913 not only modified the election provisions of the charter, reduced the powers of the mayor, and broadened the scope of municipal ownership of public utilities, but changed radically the original Houston plan by the introduction of features of the Des Moines plan, including the initiative, the referendum, the recall, and civil service provisions.

The amended charter explicitly provides that "the people of Houston, in addition to the method of legislation hereinbefore provided, shall have the power of direct legislation by the initiative and referendum".<sup>206</sup> Any proposed ordinance or reso-

lution may at any time be submitted to the council by petition from "qualified electors equal to fifteen per cent of the total vote cast at the democratic primary for the nomination of mayor and commissioners"; and the electors may also request at the same time that "such ordinance or resolution be submitted to a vote of the people, if not passed by the council". Upon receiving such petition and request, the council "shall either pass such ordinance or resolution without alteration, or submit it to the popular vote at a special election; which must be held within thirty days after the date of the ordering thereof". If the proposed ordinance or resolution is approved by a majority of the qualified electors voting thereon, it becomes thereupon or at any time fixed therein "effective as a law or as a mandatory order to the council." It is further provided that ordinances or resolutions of this kind can not "be repealed or amended except by the Council in response to a referendum petition or by popular vote thereon."

Hand in hand with the institution of popular initiative, is the institution of protest, or referendum. Reference has already been made to the provision in the Houston charter which enables the people to veto, through compulsory referendum, the granting of franchises. But aside from that the people may also, through the instrumentality of protest, check the enactment by the council of any ordinance. It is arranged in the Houston charter that "prior to the date when an ordinance or resolution shall take effect, or within thirty days after the publication of the same", upon a petition signed by ten percent<sup>807</sup> of the voters protesting against the enactment or enforcement of the same, "it shall be suspended from taking effect and no action theretofore taken under such ordinance or resolution shall be legal and valid." In the meantime, the council must "reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote at the next municipal election, or the Council may, in its discretion, call a special election for that purpose; and such ordinance or resolution shall not take effect unless a majority of the qualified electors voting thereon at such election shall vote in favor thereof." The only limitation on the exercise of this power of direct legis-

lation by the people is a provision in the charter limiting the number of special elections for this purpose to one in any period of six months.

Closely connected with the method of direct legislation by the initiative and referendum is the administrative weapon known as the recall. In Houston this method of removal from office is applicable to the "holder of any public office . . . . whether elected thereto by the people or appointed by the city council".<sup>202</sup> The movement to recall an officer begins by the preparation of a petition, the exact form of which is prescribed in the charter. "Incompetency or unfitness for or misconduct or malfeasance in the office" are specified as grounds for removal. The petition, when signed by the qualified electors, in number not less than twenty-five percent of the total vote cast at the democratic primary for the nomination of mayor and commissioners, is to be filed with the city secretary. The signatures on the petition thus filed must be verified by one or more petitioners: and after such verification, the secretary must immediately notify in writing the officer sought to be removed. To prevent the abuses which might possibly arise from the recall procedure, and to safeguard the officials sought to be removed, the Houston charter contains a provision which enables the incumbent, whose removal is sought, to file with the city secretary his objection in writing to the sufficiency of such petition; and the sufficiency of the objection is then heard and determined by the city council. If the sufficiency of the objection is sustained, the petitioners may amend the petition to meet the requirements of the ruling of the council.

The grounds for removal set forth in the petition not being declared insufficient upon objection thereto, and all other requirements being found to have been fully complied with, a recall election is to be ordered within ten days after the final certification of the secretary, unless the incumbent sought to be removed resigns within five days thereafter. The recall election is conducted just like any other regular election, in so far as polling places, ballots, and general arrangements are concerned. If, as a result of the election, the person sought to be removed is recalled, his tenure of office terminates at once. In

case he is an appointive officer, his successor may be appointed immediately by the city council; and if an elective officer, election of his successor is to be ordered. But the exercise of this so-called "guaranteed right of the people to discharge their public servants"<sup>209</sup> is not unlimited, as it is provided in the charter that "no petition for the recall of any officer shall be filed until eight months after the election or appointment and the qualification of such officer, nor shall there be more than one recall election in any one calendar year".

Another improvement of the Houston plan by the home rule amendment of 1913 was the introduction of the civil service system in the appointment of subordinate officers.<sup>210</sup> The amended charter provides a civil service commission of three persons, one of whom must be a member of the city council. They are to be appointed by the mayor, with the confirmation of the city council, and to serve for a two-year term with compensation. The civil service commission, thus appointed, has the following functions to perform: (1) to make, with the approval of the city council, "such rules and regulations for the proper conduct of its business as it shall find necessary and expedient"; (2) to "provide for the classification of all employees [with exceptions indicated below] eligible to civil service"; (3) to "make provision for open, competitive and free examination as to the fitness in regard to classified services for an eligibility list"; (4) to hear complaints of the dismissed employees and to decide whether a particular employee shall be permanently dismissed or reinstated in his employment; (5) with the approval of the city council, to "make proper rules and regulations for the government of the employees under civil service"; and (6) finally to have such rights and duties as may be granted by the city council. But the civil service system as provided in the amended charter of Houston is not thorough-going and perfect: in the first place, the commission has little power independent of the city council; and, secondly, many positions are exempted from the scope of competition. The exempted positions include all day laborers, "the heads of departments now existing or which may be hereinafter named; the City Attorney, and his assistants; City Tax Attorney, if there shall be one; City En-



gineer; Tax Assessor and Collector; Chief of Police; Chief of Fire Department; Fire Marshal; Purchasing Agent; City Health Officer; City Pathologist; City Scavenger; and all of the chief clerks of any and all departments of the city government, and the members of all boards created and appointed by the City Council''.

Such, in brief, are the essential features of the Houston charter, which, though not following the Galveston plan in every particular, still contains all the essential features of the commission plan. The number of men who have actual control, who direct the policies of the city, and who are held responsible for their actual working out and enforcement is small. The number of officers elected is reduced and the number of appointed officers correspondingly increased.

As to the results of the system in Houston, the same emphatic and unqualified assurances are given by various writers, as in the case of Galveston. Mr. Jerome H. Farbar, Director of Publicity, Chamber of Commerce, Houston, Texas, has declared that the benefits accruing from the commission form of government in Houston are as follows:

The floating indebtedness of \$400,000 was wiped out in less than a year. The plan has enabled the present administration, [1911] without a bond issue, to erect three excellent brick school buildings at a cost of \$125,000; to build six miles of paving; to expend \$60,000 for public parks and to appropriate \$50,000 for the Houston Ship Channel, exclusive of the recent \$1,250,000 voted therefor by the people of Houston. It has made possible the erection of a \$400,000 municipal auditorium out of the general revenues of the city without one cent of graft. The auditorium seats 7,000 persons and is the finest convention hall in the South. It has cleaned out the gambling houses; abolished variety theatres; discontinued the racing pool rooms; and closed the saloons after 12 o'clock midnight and all day Sunday. There has been adopted a system of block books for tax department, which enables the board of appraisers to locate the owner of every tract of land in the city and collect the assessment. It has made possible the appropriation annually of a sum exceeding \$500,000 out of the general revenues for improvements. The commissioners have purchased the city water plant, increased the cost of operation and within one year, showed earnings of \$10,575.35 without increasing the cost of consumption to the consumer.<sup>21</sup>

#### IV

### THE DES MOINES PLAN: ITS ORIGIN AND ITS PROVISIONS

The plan of government as adopted in Galveston and in Houston before 1913 has sometimes been characterized by certain publicists as an "unguarded commission government", and criticized as "an honest attempt to secure better rule which unhappily ignores the fundamental demand of democratic government—an attempt more reactionary and autocratic in character than democratic in spirit."<sup>228</sup> They rightly asserted that the securing of men of high calibre to administer municipal affairs is of far more importance than is the superior framework of the government. So long as Galveston, Houston, or any city operating under this system, possesses commissions composed only of honorable, upright, competent, and conscientious officials, they will, to be sure, have good government. But there is no reason to believe that any of these cities will not occasionally have an inefficient and corrupt commission which, with wide and centralized power, would be much more capable of injuring the city than an equally corrupt and inefficient set of administrative officers with decentralized powers.

It is argued that officials will become responsible only when they feel themselves under the immediate control of the people who are able to make and unmake them. But neither in Galveston, nor in Houston before 1913, was there any provision for the possible exercise of popular control over the officials. It remained for the State of Iowa, primarily through the energetic efforts of certain public-spirited citizens of Des Moines, to embody in statutory form a new plan of city government by commission in which all the newer forms of institutional democracy are incorporated, and in which, through democratic checks and popular protective measures, the government is supposed to be responsible and responsive to the people at all times. The

system of city government as provided in the act of the Thirty-second General Assembly, passed in 1907, has come to be known as "The Des Moines Plan of City Government", because it was proposed and urged by the people of the city of Des Moines.<sup>213</sup>

To appreciate the real significance of the Des Moines plan, a brief sketch of the situation leading to the development of such a plan is necessary, since here, as elsewhere, the movement is simply a phase of a general tendency. The Des Moines plan is not an isolated experiment, but rather the outgrowth of what preceded.

Up to the inauguration of the Des Moines plan, municipal government in the State of Iowa, both with regard to its activities and its organization, had been little altered from its early character. "There have been complaints at times of local shortcomings, but they were seldom long sustained, and the instances in which there has been any very significant change from the early system, in which rule of the city was by a council, with the mayor little more than the presiding officer, have been very infrequent. Such changes as have been made have tended toward the increase of the mayor's power."<sup>214</sup>

In the Constitution of 1857 there was inserted a clause prohibiting the legislature from incorporating cities and towns by special charters.<sup>215</sup> In accordance with this provision a general incorporation law, which classified cities and towns on the basis of population, was passed by the Seventh General Assembly. Thus, the municipalities of Iowa were, for the purposes of State legislation, grouped into (1) cities of the first class, having a population of 15,000 or over, (2) cities of the second class, having a population between 2,000 and 15,000, and (3) towns having a population under 2,000.<sup>216</sup> According to the census of Iowa<sup>217</sup> for the year 1915, the total population of the State was 2,358,066, and the urban population<sup>218</sup> was 1,277,950, living in 893 incorporated towns and cities. In 1915 there were fifteen cities of the first class, ninety in the second class, and 788 incorporated towns. The largest city is Des Moines, having a population <sup>219</sup>of 105,652 in 1915.

Though the history of municipal government and administration in Iowa has shown nothing unusual and striking, and

though no city in this State has been exceptionally badly governed, the situation in the larger cities like Des Moines has seemed rather serious.<sup>220</sup> Des Moines was governed by a mayor and nine aldermen. The board of public works was the chief executive board of the city; but the mayor had nothing to do with its final selection, save that he had first to name the candidates. The duties of the mayor were indeed few and comparatively unimportant. He had certain appointive powers, but in every case his appointment had to be confirmed by the city council, and it was to that body that the appointees were obliged to show political worth. On the other hand, the board of public works was clothed with authority of the greatest moment in a financial way.<sup>221</sup>

Of the history of municipal government in Des Moines under the old régime Iowans have no cause to be proud. Like most of the cities of its size in this country, Des Moines had its own story of shame, and its own record of corruption and inefficiency. "Bribery of voters was shamelessly practiced. Ballot boxes had been stolen and unlawfully exposed to manipulation before the count of votes. The machinery of elections and nominations was often kept in the hands of reckless and unscrupulous men and in some cases of actual criminals."<sup>222</sup> Members of the council were not infrequently in "profitable contract relations with the public service corporations",<sup>223</sup> and worse than that, there was a cordial entente or rather alliance between the corrupt politicians and privilege-seeking public service corporations. The immensely rich public service companies were always standing behind the corrupt political ring, the dominant party and its machine.<sup>224</sup>

In Des Moines the task of the reformers was rendered more difficult than elsewhere because of the fact that the public service corporations, with few exceptions, were controlled by home capital. "The master spirits in the companies were the master financial powers in the cities as well as the bulwark of protection and the magazine of defence for the political machine. Their families were social leaders. Their influence in business, society, church, educational and political circles was estimably great."<sup>225</sup> Thus, any attack on the corrupt and inefficient

political ring was liable to come to nothing, for multitudinous subtle influences were at once set to work on the side of the corruptionists.

The Des Moines plan of city government, however, was not the outcome of a crisis nor the issue of a sporadic reform movement, but was rather the direct result of strong convictions on the part of the public-spirited citizens that along with the attacks on corruption and graft attention should be directed to the reform of governmental machinery. They realized that "changes in organization and the adoption of up-to-date business methods in the conduct of public affairs will accomplish better results than the denunciation of individual evil-doers."<sup>288</sup> Thus, as early as 1903 when the Iowa State Bar Association held its ninth annual meeting in Des Moines on July 16, and 17, Mr. L. G. Kinne, the chairman of the committee on law reform submitted, among others, the following recommendation:

That the municipal government of cities of Iowa should be vested in a council of three aldermen, whose term of office should be three years, after the first council the members of which should serve respectively one, two and three years, to be determined by lot; thereafter one alderman to be elected annually; such alderman in all cases to be elected by a vote of the whole city, and vacancies to be filled by special elections; such councils to be vested with all the present powers of city councils, and to elect one of their members as mayor to exercise all the duties of mayor, as defined by law; such aldermen to be paid from two thousand to five thousand dollars per year depending upon the class of the city, with additional compensation to the mayor; all to be fixed by law; the said aldermen and mayor to be required to devote their entire time to the discharge of their duties.<sup>289</sup>

This recommendation was supported by Charles A. Clark of Cedar Rapids in a long paper read at the tenth annual meeting of the Iowa State Bar Association.<sup>290</sup> In this paper, Mr. Clark "anticipated in a striking way and to a remarkably complete extent the objections to the old charters and the grounds for expecting better results from the new."<sup>291</sup> The recommendation was adopted by the association at the conclusion of the reading of the paper.

Since the fight conducted in Des Moines by the former mayor, John MacVicar, for the public ownership of public utilities, the

civic conscience had been greatly aroused and the people educated. The way was prepared for the inauguration of a movement to rescue Des Moines from the spoilers. The adoption of the above-mentioned recommendation by the Iowa State Bar Association was simply one of the many signs of the growing demand for the reforming and re-organizing of municipal government in harmony with the business principles of efficiency and economy, and for a more effective popular control of the organs of government.

For a number of years Mr. James G. Berryhill while visiting in the city of Galveston on private business had been greatly impressed with the plan and the remarkable accomplishments of the commission form of government. In the early fall of 1905, when another trip to Galveston was contemplated, he was requested by Mr. Harvey Ingham, editor of *The Register and Leader*, to gather as much data as could be secured on the Galveston plan and to present the same to the citizens of Des Moines on his return. Accordingly, Mr. Berryhill was invited on November 17, 1905, to make a public report on the Galveston plan of government at a meeting called by the Commercial Club of Des Moines and held in the Y. M. C. A. auditorium.<sup>230</sup> The meeting developed a very marked interest on the part of the leading business men of the city, and "his earnest appeal for early but deliberate action aroused an interest and enthusiasm among his auditors auguring well for the movement then and there formally inaugurated and, in a preliminary way, organized."<sup>231</sup> Committees were appointed and a bill, containing many of the provisions of the Galveston charter and also some new features, was prepared for submission to the General Assembly of Iowa then (1906) in session. But when the bill was presented by the Des Moines committee to a joint meeting of the committees on cities and towns of the Senate and House of the Thirty-first General Assembly it failed to secure the support of the committees.<sup>232</sup>

"But the reform movement did not die with the bill. Indeed, it now became a part of the 'boosting' program of the Greater Des Moines Committee."<sup>233</sup> During the summer of 1906 the movement developed new force. The agitation was greatly

furthered by Mr. Harvey Ingham, Mr. Lafayette Young, and Mr. Wm. G. Hale through the columns of matter which appeared on the editorial pages of their respective papers, *The Register and Leader*, *The Des Moines Capital*, and *The Des Moines News*.<sup>224</sup>

At the same time, it is said that Governor Cummins, though leading the progressive forces of the State along reform lines, seemed disposed to side in with the old machine rather than to jeopardize his political future. He favored a plan of government known as the Indianapolis plan.<sup>225</sup>

The Indianapolis charter, adopted only a short time previous, had the characteristic features of the concentration of large powers in the hands of the mayor, the election of the councilmen at large, and the abolition of the old council committee system. This plan, which was freely discussed in the press, had a number of advocates. A committee was sent to Indianapolis to make a careful investigation of the plan, and the report made by that committee was very favorable.<sup>226</sup> In order to ascertain the state of public sentiment a newspaper ballot was taken by both *The Register and Leader* and *The Des Moines Capital*. The referendum taken by these papers showed a majority favoring the Galveston plan.<sup>227</sup>

In the meantime, a suggestion was made that a joint discussion be held in some public place between the advocates of the two plans: Mr. Berryhill for the Galveston plan and Mr. W. H. Baily for the Indianapolis plan; that a vote on the question be taken after its conclusion; and that those participating in the affair bind themselves to support the decision of the judges.<sup>228</sup> This suggestion having met with favor, a joint discussion was arranged by the Commercial Club of Des Moines to be held at the Shrine Temple on January 31, 1907. A committee of three hundred was named by the president of the Commercial Club to act as a jury on the debate.<sup>229</sup> The meeting was an enthusiastic one. While not all the members of the committee of three hundred were present, the Shrine Temple was well filled with citizens interested in the adoption of some form of reform government.

The Galveston plan, with modifications discussed at the meeting, won the decision by a decisive majority;<sup>40</sup> and the minority, in entire good faith, accepted the decision and joined the majority in working out what was henceforth known as the "Des Moines Plan" of city government. The result of the meeting was significant. The disinterested spectator was informed not only that there was a great demand in Des Moines for a change in the form of administration, but was also convinced as to the popularity of the Galveston plan.

At the public meeting a charter committee, consisting of James G. Berryhill, W. H. Baily, I. M. Earle, John Read, and S. B. Allen, was appointed by the chairman to frame a new charter to be submitted to the Polk County representatives in the Thirty-second General Assembly with instructions to urge its passage.<sup>41</sup> The bill which had been killed in the committees of the Thirty-first General Assembly was taken as a basis for the new bill. But several important features—such as the referendum, the initiative, and provisions aimed to prevent the formation of a machine—were added. The bill thus prepared was submitted to the Thirty-second General Assembly, became a law on March 29th, and went into effect on April 1, 1907.

"Thus after nearly two years of active agitation and intensive discussion commission government was established in Iowa. The successful outcome of the agitation was due partly to the reform spirit of the times, partly to the cumulative efforts of a group of Des Moines citizens who had for years worked courageously for better city government, and partly to the enthusiasm of men like Mr. Berryhill and Mr. Ingham, who espoused the cause of commission government as a business proposition and a means of municipal salvation."<sup>42</sup>

The act of the Thirty-second General Assembly establishing the commission form of government appears as chapter forty-eight of the *Laws of Iowa*, 1907, under the title of "Act to provide for the government of certain cities, and the adoption thereof by special election". It is also found in the *Supplement to the Code of Iowa*, 1907, under Title V, Chapter 14-c. The Des Moines plan, however, contains nothing but "appropriations and adaptations from the charters and experiences



of other cities and jurisdictions.”<sup>243</sup> It is a combination of old and new ideas, some taken from Washington, Galveston, and Los Angeles, and some from Switzerland and New Zealand, but all made subsidiary to direct government by the people. It grew out of the celebrated Galveston scheme by commission, but it grafted on the bureaucratic plan the new institutional forms of democracy like the initiative, the protest, the referendum, the recall, and the merit system. It is this “combination of principles and institutions and their adaptation to exigencies of modern urban conditions” that justifies the claim that the plan was “a new and distinct species of city government.”<sup>244</sup>

The commission law of Iowa is a general law, and any city of the State having the requisite population may avail itself of the advantages of commission government. As originally enacted in 1907, the law applied only to “any city of the first class, or with special charter, now or hereafter having a population of twenty-five thousand or over, as shown by the last preceding State census”.<sup>245</sup> But it was amended<sup>246</sup> to apply to cities of seven thousand population or over in 1909, and to cities of two thousand population<sup>247</sup> or over in 1913. Thus, at the present time, all cities of the first and second classes are authorized to take advantage of the commission law at their option.

The question of whether a given city shall adopt the new form of government may be put to a vote in any city having the requisite two thousand population or over when electors equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding election petition to that effect. When the petition has the required number of signers, it is the duty of the mayor, by proclamation, to call a special election within two months after the filing of the petition. At the election a majority of the votes cast is all that is necessary to change the form of government.

The next step in the introduction of the system is the election of the mayor and councilmen, which may take place at the next regular municipal election. But the mayor may within ten days after the special election call, by proclamation, another special election for the choice of officers of the new government, if no regular city election occurs within one year. If the plan

is not approved by the people at the special election, the question may not be submitted again within two years thereafter.<sup>248</sup>

Cities adopting the plan are governed primarily by a council, which is to take over and distribute among the departments all the powers and duties formerly held and performed by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, solicitor, assessor, treasurer, auditor, city engineer, and other boards and officers.<sup>249</sup> The council consists of a mayor and four councilmen in cities of 25,000 population or over, and a mayor and two councilmen in cities having a population between 2000 and 25,000. The mayor and councilmen are elected for a term of two years, and vacancies are filled by appointment by the remaining members. Candidates for offices are nominated and elected at large, through the process of a non-partisan double election. The primary election for the nomination of the mayor and councilmen is held on the second Monday preceding the general election; and only those who are selected at the primary may be candidates at the general election. The method and procedure in the primary are the same as in the general election.<sup>250</sup>

At the primary any person may become a candidate for mayor or councilman by filing with the clerk, at least ten days before the date of the election, a statement of such candidacy accompanied by a petition of at least twenty-five qualified voters. Upon the expiration of the time of filing the statements and petitions for candidates, it is the duty of the city clerk to publish in the daily newspapers of the city "the names of the persons as they are to appear upon the primary ballot". On the ballot the names of candidates for mayor and councilmen are arranged alphabetically, and the qualified voters may vote for only one of the candidates for mayor and for four or two of the candidates for councilmen, as the case may be. The ballot is printed upon plain and substantial white paper, and contains "no party designation or mark whatever". At the second election only the two candidates receiving the highest number of votes for mayor, and only the eight or four (as the case may be) receiving the highest number of votes for councilmen at the primary may be

candidates for mayor and councilmen. The candidates receiving the greatest number of votes in the second election are declared to be elected as mayor and councilmen.<sup>251</sup>

In connection with elections under the commission plan, provision is made in the statute for the protection of the purity of the ballot and for the prevention of the various illegal and corrupt practices which are unusually common in this country. Persons agreeing to render services to the candidates in consideration of money or other reward are to be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding thirty days; and persons giving or receiving bribes at the elections, or attempting illegal voting are deemed "guilty of a misdemeanor and upon conviction shall be fined a sum not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and be imprisoned in the county jail not less than ten (10), nor more than ninety (90) days."<sup>252</sup> Moreover, "every elective officer in any such city shall, within thirty days after qualifying, file with the city clerk, and publish at least once in a daily newspaper of general circulation, his sworn statement of all his election and campaign expenses, and by whom such funds were contributed."<sup>253</sup>

When the question of adopting the commission form of government has been decided at the special election and when the mayor and councilmen have been duly elected, the government of the city under the new plan is "really a very simple affair. It is not only simple but direct. It organized the city as a unit, making it possible for the people at all times to act 'together along simple and direct lines'."<sup>254</sup>

The mayor and the councilmen are the only elective officers under the Des Moines plan. They constitute the council which possesses and exercises "all executive, legislative and judicial powers and duties now had, possessed and exercised by the mayor, city council, solicitor, assessor, treasurer, auditor, city engineer and other executive and administrative officers in cities of the first and second class, and in cities under special charter, and shall also possess and exercise all executive, legislative and judicial powers and duties now had and exercised by the board of public works, park commissioners, the board of police and fire commissioners, board of waterworks trustees, and

board of library trustees in all cities wherein a board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, and board of library trustees in all cities wherein . . . . [such boards and trustees] now exist or may be hereafter created."<sup>255</sup>

The council, by a majority vote, elects the more important officers and employees of the city, including a city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, market master, street commissioner, three library trustees, and "such other officers and assistants as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the city."<sup>256</sup> The council may also at any time by a majority vote remove officers and assistants so appointed,<sup>257</sup> and from time to time "create, fill and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city; and may by majority vote of all the members remove any such officer or employe, except as otherwise provided for in this act; and may by resolution or otherwise prescribe, limit or change the compensation of such officers or employes."<sup>258</sup>

The executive and administrative powers and duties of the city are distributed among five departments designated as the "Department of Public Affairs", the "Department of Accounts and Finances", the "Department of Public Safety", the "Department of Streets and Public Improvements", and the "Department of Parks and Public Property". Moreover, "the council shall determine the powers and duties to be performed by, and assign them to the appropriate department; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employe to perform duties in one or more departments, and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city."<sup>259</sup>

The Des Moines plan "follows the Galveston plan in making the commission as a whole and not the mayor responsible for the city government, and the Houston plan in making the commissioners actual superintendents instead of mere directors of their

departments.”<sup>260</sup> The commissioners under the Des Moines plan, except the mayor, are not elected directly to the departments of which they take charge. They are simply elected as members of the council, and it is the duty of the council to assign by a majority vote at its first regular meeting, each of its members to be the head of a department, except the mayor, who by virtue of his office, is always superintendent of the department of public affairs. In cities of less than 25,000 population, where there are two instead of four councilmen, each is assigned to two of the four departments. Such designation, however, need not be permanent, but may “be changed whenever it appears that public service would be benefitted thereby.”<sup>261</sup> Thus, each member of the council is put in charge of some definite activity. He exercises administrative control over his particular department or departments, for the success or failure of which he is held responsible directly to the council and to a certain extent to the electorate. In the place of numerous council committees, as under the old plan, there are now under the Des Moines plan five committees, each consisting of one person who is the definite, responsible head of the department or departments allotted to him.

The council meets in regular session at least once in every month, and special meetings may be called from time to time by the mayor or two councilmen.<sup>262</sup> “In cities having four councilmen three members of the council shall constitute a quorum, and in cities having two councilmen, two members of the council shall constitute a quorum, and in cities having four councilmen the affirmative vote of three members, and in cities having two councilmen the affirmative vote of two members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless a greater number is provided for in this act.”<sup>263</sup> Every motion, resolution, or ordinance, must be reduced to writing before being voted upon, and upon every vote the yeas and nays must be called and recorded.<sup>264</sup>

The mayor is the president of the council and presides at all its meetings, and he “shall supervise all departments and report to the council for its action all matters requiring attention in either.” He signs every resolution and ordinance passed by the

council, but has no veto power. The superintendent of the department of accounts and finances is the vice-president of the council, and "in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of mayor."<sup>866</sup>

The mayor and councilmen receive salaries in accordance with the population of the city. In cities having a population of less than 25,000, the mayor's salary is "not to exceed the sum of one hundred and fifty dollars (\$150.00) per annum for each one thousand (1,000) of population, or major portion thereof, in such city, and for each councilman in said city, not to exceed the sum of one hundred and twenty dollars (\$120.00) per annum for each one thousand population, or major portion thereof"; but in no such city shall the mayor receive more than the sum of \$2,500 per annum, nor shall the councilmen's annual salary be greater than \$2,000. In cities having a population between 25,000 and 40,000, the mayor's annual salary shall be \$2,500, and each councilman's salary \$1,800. In cities having a population between 40,000 and 60,000 the mayor's salary shall be \$3,000, and each councilman's salary \$2,500. Finally, in cities having a population of 60,000 or more the mayor's annual salary shall be \$3,500 and each councilman's salary \$3,000."<sup>867</sup>

Such, in brief, is the form of government as provided in the Des Moines plan. In this plan "authority and responsibility are drawn together, unified, and consolidated in the hands of a very few officers—the members of the council."<sup>867</sup> The old theory of the separation of powers, so familiar to every student of American politics, is completely ignored, and in its place the business principle is substituted. Nor is any provision for checks and balances to be found within the organization itself. All these political devices which have been so long associated with democracy are abandoned. To insure the responsibility of the commissioners and to provide for the popular control of the officers, the newer forms of institutional democracy are utilized in the Des Moines plan. "Indeed, the thorough-going democracy of the Des Moines Plan is clearly seen in the institutional forms of popular government which determine the relation between the members of the council and the electorate."<sup>868</sup>

Under the old régime, the city of Des Moines suffered greatly from the evil consequences arising from the profitable relations existing between the city officials and the public service corporations and the alliance between the machine politicians and the privilege-seeking interests. The people are well aware of the secrecy that has surrounded the granting of franchises in the past, and of the enormous amounts of money that have been made by some corrupt councilmen or other city officials through this power of franchise-granting. One of the aims of the Des Moines plan is to get rid of these evils.

Thus, in the Iowa law numerous provisions are made regarding the relations of the city officials and corporations and the granting of franchises. Officers and employees are prohibited from being interested "directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city", nor are they permitted to have any interest "directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm or corporation operating interurban railway, street railway, gas works, water-works, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of the said city." Furthermore, no officer or employee is permitted to accept or receive from such corporations "any other service upon terms more favorable than is granted to the public generally." But free transportation of policemen and firemen in uniform is excepted.<sup>262</sup>

"Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places" must remain on file with the city clerk for public inspection at least one week before its final passage or adoption. All franchises or grants for public utilities must be authorized or approved by a majority of the electors voting thereon at a general or special election. The question of granting, renewing or extending such franchises may be submitted by the council to a vote at a general or special election, or by the mayor if

petitioned so to do by twenty-five property owners of each ward in a city, or fifty property owners in any incorporated town. Notice of the election must be published in two newspapers of the city once each week for at least four consecutive weeks. All the expenses incurred in holding such elections are to be paid by the party applying for the franchise or for a renewal or extension thereof.<sup>270</sup>

Not only on the granting of franchises do the people have a veto, but they also have a voice through the institution of the protest on every ordinance passed by the council. No ordinance passed by the council (except when otherwise required by general law or in case of urgency) "shall go into effect before ten days from the time of its final passage", and if a petition signed by "electors of the city equal in number to at least twenty-five per centum of the entire vote cast for all candidates for mayor at the last preceding general municipal election", protesting against the passage of such ordinance is presented to the council, the council must reconsider the measure. If the reconsideration of the measure by the council does not result in the complete repeal of the same, the council must submit the ordinance to a vote of the electors of the city, either at the general election or at a special municipal election called for that purpose. The ordinance can become operative only in case "a majority of the qualified electors voting on the same shall vote in favor thereof".<sup>271</sup>

The referendum and the protest are means by which the people are enabled to reject undesirable legislation. "They are after all only the negative instruments of democracy: they can prevent unwise or unpopular measures, but they can not absolutely compel the adoption of desired acts."<sup>272</sup> In order to accomplish the latter purpose, that is, to enable the voters to propose the enactment of desirable legislation, provisions are made in the commission law of Iowa for the institution of the popular initiative. Thus, in the commission-governed cities of Iowa, if the council refuses to pass the needed legislation, the people may take the initiative and compel the consideration and passage of the desired measures. Any proposed ordinance may be submitted to the council by petition signed by the elec-



tors of the city "equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding general election", and requesting that "the said ordinance be submitted to a vote of the people if not passed by the council". Under such circumstances, the council must either pass the ordinance without alteration within twenty days or put the question to a vote at a special election, unless a general municipal election is fixed within ninety days thereafter. If more than ten but less than twenty-five percent of the electors petition for the enactment of an ordinance, it must be either passed or submitted to a vote of the people at the next general city election. "If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people."<sup>173</sup>

In the Des Moines plan ways and means have been provided for the possible removal of the elective officers before the expiration of the terms for which they are elected. Here, the Los Angeles recall system is incorporated. It is specifically provided in the statute that "the holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent." The recall petition must be signed by electors "equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election", must demand "an election of a successor of the person sought to be removed", and must also contain "a general statement of the grounds for which the removal is sought". The petition is to be filed with the city clerk, who is required to examine it carefully, and to ascertain from the voters' register whether or not it is signed by the requisite number of qualified voters.

In case the petition is deemed to be sufficient, it is the duty of the city clerk to transmit it to the council, which shall order and fix a date for holding the election, "not less than thirty days or more than forty days from the date of the clerk's certificate". The recall election is conducted "in all respects as are other city

elections." At the election, "any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination."<sup>274</sup> Nomination of other candidates may be made without the intervention of a primary election, by filing with the clerk "a statement of candidacy accompanied by a petition signed by electors entitled to vote at said special election equal in number to at least ten per centum of the entire vote for all candidates for the office of mayor at the last preceding general municipal election".<sup>275</sup> The candidate receiving the highest number of votes in the election is declared to be elected and to hold the unexpired term of office. If he happens to be the incumbent, he continues in office; and if not, the incumbent "shall thereupon be deemed removed from the office upon qualification of his successor." This method of removal is declared to be "cumulative and additional to the methods heretofore provided by law."<sup>276</sup>

Like the charters of Galveston and Houston, specific provisions guaranteeing publicity are also found in the Iowa law. All meetings of the council "at which any person not a city officer is admitted, shall be open to the public."<sup>277</sup>

Each month the council is required to print "in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month". Copies must be furnished to the libraries and daily newspapers of the city, as well as to any person who makes application. Provision is also made for the annual "examination of all the books and accounts of the city to be made by competent accountants", and the publication of such results.<sup>278</sup>

A civil service commission of three men is provided for in the Des Moines plan of government. A thorough-going merit system is indeed indispensable to good government, and by its adoption it is hoped to assure the best possible service for the city and to substitute personal merit and ability for "political pull" in the appointment of officials. The appointment of such a commission is compulsory in cities having a population of 15,000 or over, and optional in cities with a population between

2,000 and 15,000. But, "in all cases in which no civil service commissioners are appointed by the council, the council shall have the same powers and shall exercise and perform all the duties devolving upon such commissioners".<sup>270</sup>

The civil service commissioners are appointed for six years and are removable for cause at any time by a four-fifths vote of the council. Civil service rules, however, do not apply to all city officials. The law exempts commissioners of any kind (laborers whose occupation requires no special skill or fitness), election officials, the mayor's secretary, the assistant solicitor, and all officers specifically named in section eight of the law.<sup>280</sup> With these exemptions, the only important officers of the city subject to the civil service rules are the members of the police and fire departments, and the chief of the fire department. Indeed, civil service regulation in the Des Moines plan is confined to purely clerical assistants and employees, who constitute a small proportion of the persons in municipal employment.

All appointive officers and employees who are subject to the civil service rules are elected by the council from a list of persons who have successfully passed the civil service examination which is held semi-annually for "the purpose of determining the qualifications of the applicants for positions". These examinations are practical in their character and relate "to such matters as will fairly test the fitness of the person examined to discharge the duties of the position to which he seeks to be appointed." Persons holding civil service positions may be removed by a majority vote of the civil service commissioners for "misconduct or failure to properly perform their duties under such rules or regulations as may be adopted by the council." Moreover, the chief of the police and of the fire department, and any superintendent or foreman in charge of municipal work may "peremptorily suspend or discharge any subordinate then under his direction for neglect of duty, disobedience of orders or misconduct". But in the case of removal or suspension from office, ample provisions are made in the law for appeals and hearings.<sup>281</sup>

Finally, provision is made for the steps necessary to return to the former plan of government if in the opinion of the voters the commission form proves a failure. "Any city which shall

have operated for more than six years under the provisions of this act may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter may resume said charter" by a majority vote cast at a special election called for that purpose. Such a special election may be called upon the petition of not less than twenty-five per cent of the electors of the city. When the question of abandoning the commission form has been decided in the affirmative, and the officers prescribed by the general laws of the State for cities of like population have been elected at the biennial municipal election, the city then becomes again a city under the general law. But such a change is simply a change in its form of government, and is not in any way intended to affect "the property, rights or liabilities of any nature of such city".<sup>sss</sup> Thus, the cycle of the law is completed: it begins by introducing a new form of government, provided for its workings, and ends in provisions by which it may be abandoned for the former plan if it proves unsatisfactory.

The city of Des Moines, for the specific needs of which the law was primarily framed, could not of course take advantage of the act without passing through the ordeal of a special election. At this special election the politicians and other interests were not unrepresented. It was a serious matter for them. As the first thing needed in the campaign was publicity and as every paper of the city was on the side of the reformers, a new paper, known as the *Tribune* was launched, and a vigorous campaign against the reformers begun. This paper was sent to every home in the city during the fight. The saloon interests, the politicians, and the gamblers were nearly a unit in urging the electorate to vote no. "The union labor voters were assured that the scheme was a device of their natural enemies, the employers. The foreign voters were simply told that the new scheme was a return to the monarchy they had just escaped from in Europe. The negroes were reminded of the origin of the new form of government."<sup>sss</sup>

Before election, the startling discovery was made that the registration books under the management of the "City Hall

Gang" had been padded with thousands of names having no right to vote. "The grave yards had been searched for names which repeaters could give in precincts where the ring was all-powerful."<sup>884</sup> But all these tactics were of no avail, for a petition for a restrictive and mandatory injunction was filed, asking the court to direct the registrars of elections to correct their books and to cut out the bogus names. Accordingly, a revision of the registration list was ordered by the court, and in this revision it was reported that about seven thousand names were stricken from the list.<sup>885</sup> On June 20, 1907, the voters of Des Moines adopted the new plan by a vote of 6376 to 4087.<sup>886</sup>

Having failed in their attempts to corrupt and deceive the electorate and to carry the election by recourse to the grave yards, the reactionaries made a last attempt to defy the will of the people of the State and the city by resorting to the court in the hope that the latter would nullify the law passed by the legislature and ratified by the city. On October 10, 1907, injunction proceedings to test the constitutionality of the Des Moines plan were begun in the District Court of Polk County. It was the intention of the taxpayers bringing the suit to raise every objection to the law and plan that had been suggested by its opponents. Every provision of the law which its opponents had declared vulnerable was attacked: six points were urged in the support of their contention. In the first place, it was claimed that the law violated Article IV, Section 4, of the Federal Constitution which provides that the United States shall guarantee to every State in the Union a republican form of government. Secondly, it was contended that section one of the new law violated Article III, Section 30, of the Iowa Constitution, which prohibits the legislature from passing local or special laws of any character, it being alleged that this law, applicable only to a few cities of the State, was special and class legislation. In four particulars it was claimed that Article III, Section 1, of the Iowa Constitution providing for the separation of the governmental powers was violated by the provisions in the law vesting all powers in the council and establishing the initiative, the referendum, and the recall.<sup>887</sup>

The suit to test the constitutionality of the law, however, was very timely. It was believed that at some stage of the proceedings the new form of government would get into the courts. It was therefore much better to have the test made at that time than to have it come just as the city might be engaging in an expensive improvement, or following the assessment of property, or even after the new officials had been chosen, to be met with a refusal of the officers to vacate.

On November 23rd the Des Moines plan scored its second triumph when Judge James A. Howe, of the District Court, handed down a decision holding the law to be constitutional in every important feature.<sup>288</sup> After declaring that the provision of the Federal Constitution invoked in this case was a guarantee to the State and did not apply to a city; that there was no ground for the claim that the law was special or class legislation; that Article III, Section 1, of the State Constitution of Iowa related only to the government of the State and did not affect the government of cities; and after sustaining the new forms of democratic institutions like the primary election, the initiative, the referendum, and the recall, the court concluded its decision in the following words:

It is elementary that state legislative power is plenary, and that he who would challenge a legislative enactment must be able to specify a particular provision of the Constitution which deprives the legislature of the power to pass the act; also that it is the duty of the court to reconcile the statutes with the Constitution when it can be done without doing violence to the language of either, and in all cases of doubt the doubt must be resolved in favor of the constitutionality of the statutes. Considering and analyzing this act section by section the court is unable to say that it is in conflict with the letter of the Constitution and therefore sustains the law.

The decision of the District Court, when an appeal was made, was affirmed by the State Supreme Court on February 18, 1908, and the constitutionality of the Des Moines plan was definitely settled.<sup>289</sup>

In Des Moines a primary election was held in February to select candidates for the five offices; and an election, at which the voters made a choice between the candidates selected at the primary, was held in March. On April 6, 1908, the plan went into operation in Des Moines. Since then, eight other cities in

the State have also adopted the plan. These cities are Burlington, Cedar Rapids, Fort Dodge, Keokuk, Marshalltown, Mason City, Sioux City, and Ottumwa.

## V

### SPREAD OF THE COMMISSION PLAN OF CITY GOVERNMENT

Probably there never has been a period of greater activity in the re-organization of city government and in the re-making of city charters than the period following the passage of the Iowa law known as the Des Moines plan. The simplified organization of city government exemplified in the commission plan very soon spread from the medium-sized cities in the Middle West to the cities of the metropolitan class in the East. The movement went from city to city, and from State to State; and in a comparatively short time the commission plan was in operation in over four hundred cities in forty-three States, thus becoming nation-wide in its scope. Such a wide interest in the commission form of city government during the past few years has been the most conspicuous development of recent times in the realm of American municipal affairs.

Prior to 1907, however, the history of commission government was short and simple: only two cities in one of the southern States were operating under this novel plan. But the results in these two cities soon attracted the attention of municipal reformers and citizens in other States, who, as sufferers from municipal ills, naturally turned to the remedy which had apparently cured or benefited other cities similarly affected.<sup>290</sup> Visits to Galveston and Houston, the only two cities up to that time where the plan was in operation, were often made by individuals or committees of citizens in order to investigate the actual operation of the new plan; and practically without exception the visitors were greatly impressed with the system.<sup>291</sup>

Accordingly, reformers and citizens of many graft-burdened and boss-ridden cities throughout the country hastened to espouse the "Texas Idea" because they saw in it a means of elevating the character and efficiency of their city government.



At the same time, it can not be denied that among the factors responsible for the popularity of the new plan was the erroneous "idea always lurking in the popular mind that there is some time to be discovered a piece of political mechanism which when set in motion will give perfect city government without further attention from the voter than the occasional casting of a ballot."<sup>222</sup> The commission plan, which appeared just at the time when the people were beginning to realize the "conspicuous failure" of municipal government in this country, was immediately heralded as the long-looked-for ideal piece of political mechanism. Indeed, "the commission movement is essentially one of imitation. City after city has adopted the commission plan because it had been reported successful in Galveston, Houston or Des Moines."<sup>223</sup> But the fact that many of the American cities are following with interest the experiments and results of other municipalities is not discouraging. On the contrary, it has been pronounced as "one of the most hopeful signs in regard to the improvement of municipal conditions."<sup>224</sup>

By 1907 the commission form of city government had proved its worth as a measure of municipal reform. In that year not only was a new stimulus given to the plan throughout the country, but the commission form itself underwent a great change as the result of the inauguration of the famous "Des Moines Plan". As soon as the new forms of institutional democracy had been incorporated into the original plan the commission system gained a strong hold upon public confidence. It is for this reason that the Des Moines plan is superior to the original Galveston plan; and from the time that the newer and improved system was written into the statute books of Iowa it has been Des Moines, instead of Galveston, which has led the way in the commission movement and has exerted the greatest influence in its spread throughout the whole country.

Moreover, commission government has made headway "not alone under its own steam but through the momentum given it by the vigorous propaganda for nomination reform, the short ballot and direct legislation."<sup>225</sup>

Among the forty-eight States of the Union there are at the present writing only six<sup>226</sup> that have failed to appreciate and

adopt the new plan of municipal government. In all the other States this plan has been embodied in constitutional or statutory laws. To be more specific, there are twenty-seven States<sup>297</sup> which have already enacted general laws, optional or obligatory, on the subject of commission government. In six<sup>298</sup> of these twenty-seven States, and also in six other States,<sup>299</sup> cities of a certain size are permitted by constitutional provisions to draw up their own charters with certain restrictions; and thus, any of these cities may adopt a commission charter if it sees fit. One<sup>300</sup> of the home rule States and three other Commonwealths<sup>301</sup> have enacted optional charter laws; and among the plans provided in these laws there is invariably the commission plan. There is still another class of States, six in number,<sup>302</sup> in which there is no general law providing for the commission form nor any optional charter law, but in which the legislatures have in many cases seen fit to grant commission charters to some of the municipalities by special enactment. Thus, in considering the adoption and operation of the commission form of government in American cities, the States can be conveniently divided into the following classes:

States with permissive or optional general commission laws.

States with obligatory self-executing commission laws.

States with optional model charter laws.

States with a constitutional home rule charter system.

States with special commission charters.

States in which there are no commission laws or commission charter cities.

#### STATES WITH PERMISSIVE OR OPTIONAL GENERAL COMMISSION LAWS

Iowa has the honor of being the first State to pass a permissive or optional general commission law applicable to cities of a certain size. Following the passage of the Iowa law, there were general laws of the same nature passed in the same year by the legislatures of Kansas, North Dakota, and South Dakota. Attention will now be turned to these laws and subsequent acts of other States.

*Kansas.*—In the early part of the year 1907, when the Des Moines plan was still in the making, the Kansas legislature passed two acts enabling cities of the first and second classes

to adopt the commission form of government at their option. But both statutes "bore evidences of haste in drafting and serious defects were apparent."<sup>303</sup> Accordingly, the law for the first class cities was amended in 1909;<sup>304</sup> and the law applying to cities of the second class was repealed in the same year, and in its place a new law was enacted.<sup>305</sup> In 1913 another general law was passed to enable cities of the third class to adopt the commission form of government.<sup>306</sup>

The amended law for cities of the first class contained some of the features of the Des Moines plan. It provided a commission of five members to exercise the powers formerly vested in the mayor and council, and to take charge of the administration of five specified departments: police and fire; finance and revenue; streets and public improvements; parks and public property; and streets, waterworks and lighting. For cities of the first class having less than 18,000 inhabitants<sup>307</sup> the number of commissioners was reduced to three, and their duties were made the same as those of commissioners in the second class cities. As provided in 1909 the commission, after being elected, assigned by a majority vote each of its members to some particular department—except the mayor, who is elected as such and is ex-officio commissioner of the fire and police departments. But in 1913 an amendment was made to require candidates for commissioner to indicate the specific departments for which they were running. Thus, there is now no assignment of duties to each officer after the commission has been elected.<sup>308</sup> Commissioners are nominated and elected at large by the process of double election, for a term of two years. Provisions are also made for a civil service commission, and for the initiative, referendum, and recall. The commissioners must appoint a civil service board of three members. The initiative can be invoked on petition of twenty-five percent of the voters at special elections and ten percent at the general election. The referendum is made compulsory on franchises, but not otherwise. Recall elections can be held on petition of twenty-five percent of the voters voting at the last municipal election.<sup>309</sup> Any city of the first class can submit to the electorate at a special election the question of adopting the plan above outlined, on a ten

percent petition of the voters; and any city may abandon the experiment after a trial of four years, through the same process, on petition of twenty-five percent of the electors.

The new law for cities of the second class was modelled on the Iowa law. The governing body is a board of three commissioners, including the mayor. Their tenure of office is three years, with partial renewal annually. The commissioner-departments are: fire, police, and health; streets and public utilities; education, finance, and revenue. The mayor is ex-officio commissioner of police, fire, and health. By an amendment passed in 1911<sup>310</sup> candidates are required to announce upon the primary ballot which particular commissionership they are seeking. Any name can be placed on the primary ballot on petition of twenty-five voters. The number of candidates voted for at the second election is double the number of offices to be filled. The initiative is made available at general elections on a petition of ten percent of the voters, and a forty percent petition may justify the calling of a special election. The referendum is made operative on a twenty-five percent petition. This plan can be adopted at a special election called on a petition signed by forty percent of the voters; and may be abandoned after four years trial in the same way, through a forty percent petition.

The general law of 1913, applicable to third class cities, is very similar to the law for second class cities, except that there is no provision made for the initiative and referendum.

The response to these laws on the part of the cities of Kansas were enthusiastic and prompt. From the time of the passage of these laws to the present over forty cities<sup>311</sup> have installed the commission plan. This record places Kansas among the leading States in this movement.

*North Dakota.*—North Dakota is one of the four States which enacted commission laws in 1907. The North Dakota law was passed on March 20th, and applied to cities of not less than two thousand inhabitants. But in 1911 the law was amended to extend the system to include towns and villages having a population of not less than five hundred.<sup>312</sup> The petition requesting that the question of adoption be submitted to the voters is required to contain the names of ten percent of the electors; but

should the proposition be voted down, it may not be again submitted for a period of one year. The board of commissioners consists of five members, elected for two years and having the usual powers possessed by commissions in other cities. Candidates are nominated by petition and elected on a non-partisan ballot. But the noteworthy feature of this law is the cumulative voting system: "Each voter shall be allowed as many votes for the candidates of City Commissioners as there are Commissioners to be elected, such votes being distributed among the candidates as the voter shall see fit; no voter shall be allowed to cast more votes than candidates to be elected."<sup>13</sup>

The initiative, referendum, and recall were not found in the original law, but were provided by an amendment passed in 1911. Under this amendment the initiative is made available at a general election on fifteen percent petition of the total vote cast at the last preceding municipal election; while twenty-five percent petition is required to call a special election. All ordinances except those declared by a two-thirds majority to be emergency measures are subject to a referendum vote on a petition of ten percent of the voters. Recall elections can be held upon petition by thirty percent of the voters. The plan may be abandoned after four years trial at a special election called in response to a petition signed by not less than forty percent of the electors. Ten cities in North Dakota have elected to come under this plan.<sup>14</sup>

*South Dakota.*—The South Dakota commission law was passed in 1907, amended in 1909, and altered again in 1911, 1913, and 1915. It created, in addition to the classes of cities then existing, a new class of cities known as "cities under commission", and was a general optional law enabling cities of the first, second, and third classes to adopt this new form of government.<sup>15</sup> On petition signed by a number of voters equal to fifteen percent of the number of votes cast for mayor at the last previous municipal election, the question of adopting the plan may be submitted to the voters at a special election.

The law provides for a board of five commissioners, elected for five years, with partial renewal each year; but the city has the option of determining at the time of adoption whether there

should be five or three members of the board. If five members are elected, there are four departments: police and fire, streets and public property, waterworks and sewerage, and finance and revenue. But if the city chooses to have three members on the board, there are only two departments: public property, police and fire; and waterworks and sewerage. Any voter may become a candidate at the annual election upon the petition of not less than twenty-five nor more than one hundred and fifty voters. Candidates can only be selected by a majority of all the votes cast. Should it appear that no one has received the necessary votes, a second election shall be held on the Thursday following the first election. But in such a case the balloting is confined to the two candidates receiving the highest vote in the first election.

The initiative and referendum may be invoked by a five percent petition at a special election; and in the case of a referendum election the proposition voted on may refer to the whole or to a portion of an ordinance. The referendum on franchises is compulsory. Recall elections can be held on petitions of fifteen percent of the voters. Thus far, fourteen cities in South Dakota have elected to come under the new plan as above outlined.<sup>316</sup>

*Mississippi.*—Mississippi was the second State in the South to provide for the commission plan of city government. Prior to 1908 government by commission in the South was confined to the State of Texas, but in that year the so-called "Home Rule Law" of Mississippi was passed.<sup>317</sup> It is an enabling act under which all the cities of the State are granted the option of adopting the commission form of government at a special election called upon a petition signed by at least ten percent of the voters. It provides an aldermanic body consisting of three or five commissioners, elected at large and possessing all the powers and duties of the mayor and aldermanic bodies and all other elective municipal officers. The electors of the city, in their petition requesting a vote on the commission form of government, are allowed to determine the number of commissioners, their salary, the time required of each, the bond to be given by each, and such other officers as it might be desired to elect in their cities. Thus, the characteristic feature of this law is that

it leaves more liberty and permits more discretion on the part of the locality with regard to the officers and the exact form of government than any of the other laws which had been passed up to that time.

In 1912 another law on the same subject was passed by the legislature.<sup>318</sup> It is applicable to all cities upon adoption at a special election called upon petition of ten percent of the qualified electors. Under the new law, the number of commissioners is definitely fixed at three, including the mayor, all elected for a term of four years. But the salaries to be paid to the commissioners, and the number of commissioner-departments are still left to be fixed by ordinance. The commission is vested with the usual legislative, executive, and judicial powers of the city, but when any city operating under the act desires to extend, diminish, or limit the powers and duties of the council, "the Council may adopt an ordinance so extending, diminishing, or limiting the powers or duties to be exercised by such Council or the members thereof, as desired, and shall . . . submit the same for the approval of the qualified electors of such city at a general or special election". If a two-thirds majority of the qualified electors of the city voting thereon shall be in favor of such an ordinance, then a certified copy of the same must be submitted to the Governor. It is then the duty of the Governor to consult the Attorney-General about the constitutionality of the ordinance; and if it is found to be consistent with the Constitution and laws of the State the ordinance must be approved by the Governor.

Both the laws of 1908 and 1912 required the submission of all franchise or bond issue ordinances to a referendum vote, and provided for the initiative, referendum, and recall; but the conditions of their operation have been entirely superseded by an act of the legislature approved on March 27, 1914.<sup>319</sup> Under this law the initiative is available to any municipality on petition of ten percent of the qualified electors; and the referendum may be secured on petition of twenty percent on all measures excepting those which are declared to be emergency measures. The recall is made available on a twenty-five percent petition, but the petition may not be circulated until after it has been

published in some newspaper for three weeks, together with the signatures of twenty-five qualified electors. Thus far nine cities of the State have taken advantage of the commission laws. The plan has been in operation longest in Clarksdale and Hattiesburg, both of which cities adopted it subsequent to 1910.<sup>320</sup>

*Texas.*—Up to 1909 Texas had twelve commission-governed cities. Galveston received its first commission charter in 1901, and Houston in 1905. These two pioneer cities were soon followed by Dallas, Fort Worth, El Paso, Denison, and Greenville in 1907; and five other cities, including Austin, the State capital, Waco, Palestine, Corpus Christi, and Marshall. But all these cities secured the commission form of government through special charters, and thus there were features peculiar to each of them. Instead of a uniform system, these charters allowed conflicting and perplexing provisions to arise in several cities.

In view of the difficulties inherent in the special charter system, the legislature passed on April 1, 1909, a general law enabling cities of less than 10,000 population to adopt this form of government by a referendum vote.<sup>321</sup> This law was amended in 1913 and again in 1914. The amendatory act of 1913 permits any municipality having a population of 500 to 5000 to adopt the commission form of government; and the act of 1914 enables cities of 1000 or over to have the commission plan submitted to a referendum vote on petition of ten percent of the voters or on an affirmative vote of the council by a two-thirds majority.<sup>322</sup> The government provided by the acts is vested in a mayor and two commissioners elected for terms of two years. But there are no provisions made for the initiative, referendum, and recall, except that ordinances granting franchises may be referred to the electorate on petition of five hundred voters. Since the passage of these laws over twenty Texas cities have elected to come under the new form of government.<sup>323</sup>

*Wisconsin.*—The Wisconsin statute was passed in June, 1909, amended in 1911, and altered again in 1915.<sup>324</sup> It is an enabling act applicable to cities of the second, third, and fourth classes. Thus, Milwaukee, the only city of the first class in the State, is excluded from the operation of the law.<sup>325</sup> The question of



adoption can be submitted "upon petition of electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding city election".<sup>326</sup> The commission council is composed of a mayor and two other members. A unique provision of the Wisconsin law is that "Any person possessing all the qualifications of an elector in such city other than the qualification of residence therein shall be eligible to election as mayor or other member of the council, but no person who holds a license for the sale of intoxicating liquors shall be eligible to any such office."<sup>327</sup> The mayor is elected for six years; while the terms of the two councilmen are two and four years respectively. Unlike most of the other commission laws or charters, the Wisconsin statute does not divide the administration of the city into departments, but leaves the whole arrangement to the council.

Primary nomination by petition, non-partisan elections, the initiative, the referendum, and the recall were all provided for in the original law. But in view of the decision of the Supreme Court in the case of *Meade v. Dane County*,<sup>328</sup> declaring unconstitutional the referendum provision when applied to a county, the legislature in 1915 abolished the referendum provisions for cities as well as for counties. In the same year the sections of the original law relating to the initiative and recall were also revised. The initiative is now made available on a fifteen percent petition, and the recall is operative on a thirty-three and one-third percent petition in cities of the third and fourth classes, and on a twenty-five percent petition in cities of the first and second classes.<sup>329</sup> Thirteen Wisconsin cities are now organized under the State law as above analyzed.<sup>330</sup>

*Illinois.*—In 1909 a special committee was appointed by the legislature to investigate and report on the commission form of government for cities. After visiting Galveston, Houston, and Dallas the committee was greatly impressed with the system and strongly recommended its adoption for Illinois cities. But not until the next year, after the recommendation of the Governor in his special message, did the legislature pass any act to this effect.<sup>331</sup>

The Illinois statute of 1910, as subsequently amended in 1911 and 1915, is an optional general law applicable to all cities and villages of the State containing a population not exceeding two hundred thousand, and may be adopted at a popular election called on petition of electors "equal in number to one-tenth of the votes cast for all candidates for mayor or president of the board of trustees at the last preceding city or village election."<sup>333</sup> It provides for a council of five members, including the mayor, elected at large through the process of a non-partisan double election, for terms of four years, and exercising all executive and legislative powers possessed by the former city or village officers, except those vested in the board of local improvements and park officers.

The executive and administrative powers are distributed among the following five departments: the department of public affairs, the department of accounts and finances, the department of public health and safety, the department of streets and public improvements, and the department of public property. The law requires the mayor to be commissioner of public affairs and superintendent of that department, and provides that "the council shall, at the first regular meeting after election of its members designate by a majority vote" each of its members to be commissioner and superintendent of a particular department.<sup>334</sup>

There are provisions for the initiative, referendum, and recall. But as originally provided in the law of 1910, the recall petition was required to be signed by seventy-five percent of the electors voting for mayor at the preceding municipal election. This number, however, was reduced in 1911 to fifty-five percent, which is still too high to be effective and indicates a cautious spirit in the General Assembly of Illinois. This high percentage requirement "makes the use of recall so much more difficult than in other places that it is doubtful if it will be called into operation."<sup>335</sup> The initiative is made available at a general election on petition signed by ten percent of the voters at the preceding election, and a twenty-five percent petition may result in the calling of a special election. The referendum may be invoked on a ten percent petition against all measures except those declared by a two-thirds vote to be emergency measures;

and it is compulsory on franchises. The law itself contains no provision for the merit system, but recognizes the former civil service law of 1895.<sup>336</sup> Any town or village, after three years trial of this form of government, may abandon it at a special municipal election called upon petition of twenty-five percent of the electors of the city.<sup>336</sup>

Following the passage of the law about twenty cities and villages adopted the commission form of government in the first year; and about twenty additional municipalities have elected to come under the provisions of this act in subsequent years.<sup>337</sup>

*South Carolina.*—In 1910 three States in the South—South Carolina, Kentucky, and Louisiana—passed general commission laws applicable to their respective cities of certain sizes. The South Carolina act<sup>338</sup> was approved on February 21st. Under this act any city having a population between 20,000 and 50,000 may adopt the commission form of city government at a special election called upon a petition representing twenty-five percent of the vote cast for mayor at the preceding election. But in 1912 another law<sup>339</sup> was enacted to extend the same privilege to cities of over 10,000 and less than 20,000 inhabitants, and also to cities of over 50,000 and less than 100,000 inhabitants. Under section twenty-nine of this act, municipalities having a population from 7000 to 10,000 may also adopt the commission form; but this section was inserted for the special benefit of Florence—as this is the only city in the State having a population between 7000 and 10,000.

The governing body under the South Carolina commission laws is the usual council of five members, elected for four years with partial renewal. The powers of the council are distributed among these five officers by appointment of the mayor, and may be redistributed by vote of the council. An unusual feature in the law is the broad power given to the city attorney, who is required to see that laws in every particular are enforced; to take necessary steps to enforce the provisions of the same; and in case of violation or oversight, is authorized to have indictments brought and prosecutions made.

Absolute publicity in the matter of appropriations is provided for; and no franchise can be granted without a referendum

vote. All public officials and employees are placed under the control of a civil service commission, and may not be removed except for cause and upon the joint vote of the civil service commission and the city council after a public hearing. Provisions are also made for the initiative, referendum, and recall, any of which can be invoked upon the presentation of a petition representing twenty percent of the vote cast for mayor at the preceding primary election, but the unusual feature is that the recall petition is to be addressed to the Governor. Operation under this act can be discontinued after six months trial by a popular vote. Columbia, the capital of the State, was the first to take advantage of the act, by inaugurating the new plan on May 12th of the year of its enactment.<sup>340</sup>

*Kentucky.*—Kentucky fell in line on March 21, 1910, with an act enabling cities of the second class<sup>341</sup> to adopt the commission plan at a popular election called upon petition of twenty-five percent of the electors voting at the preceding general election.<sup>342</sup> By two optional acts passed in 1914 the same privilege was extended to cities of the third<sup>343</sup> and fourth<sup>344</sup> classes.<sup>345</sup> The governing body provided by the Kentucky laws is a board of five commissioners for cities of the second, third, and fourth classes. Nomination is made by a petition signed by one hundred voters. Both the election and the nomination are strictly non-partisan. The mayor is elected for four years, while the terms of the commissioners are two years. There is no civil service or recall provision, but the initiative and referendum can be invoked at any regular election on petition representing twenty-five percent of the vote cast for mayor at the preceding election. The plan may be abandoned after four years trial at a popular election based on petition of one-third of the voters. Thus far only six cities in Kentucky have elected to come under the provisions of the commission legislation.<sup>346</sup>

*Louisiana.*—The first commission law of Louisiana went into effect on April 7, 1910. It was applicable to cities of 7500 inhabitants or over; but the cities of New Orleans, Monroe, Lake Charles, and Baton Rouge were expressly excluded from the operation of the law, either in the title or in the text of the bill.<sup>347</sup> But this statute was superseded by a general law

enacted in 1912, which was amended in 1916.<sup>348</sup> The new law is applicable to any town having a population of 2500 or over, and also to any city, New Orleans excepted, having a population of 5000 or over. The question of adoption may be submitted on "petition of electors equal in number to twenty-five per centum of the qualified electors" of the city. Provision is made for a council consisting of a mayor and four councilmen for cities having a population of twenty-five thousand or over, and a council consisting of a mayor and two councilmen for cities having a population between 5000 and 25,000 and for towns of twenty-five hundred or over.

The administration is divided into five departments in cities of the first class, and into three departments in cities of the second class. The mayor is given the administration of the department of public affairs and public education in cities of the first class, and of public health and safety in cities of the second class. The law specifically requires that "each candidate shall announce his candidacy for mayor or for councilman and commissioner of a designated department or of two departments".<sup>349</sup> Provisions are made for the initiative, referendum, and recall, but not for the primary election and civil service. In all cases petitions signed by a number of citizens equalling thirty-three percent of the vote cast for mayor at the preceding municipal election can bring these devices into operation. Any cities operating under this plan for more than six years may abandon such organization by a majority vote at a special election called on petition signed by thirty-three percent of the electorate. Thus far, eight cities<sup>350</sup> in Louisiana have elected to come under this general law; and three cities<sup>351</sup> have adopted the commission plan under special acts.

During the year 1911 legislation affecting the interests of the city had a front place in almost all the States in which the law-making body was assembled in that year. Among the important matters under consideration was the commission form of city government. Seven States, widely scattered throughout the country, passed in that year general optional commission laws, and many others either amended the already existing commission laws or passed commission laws other than the general permis-

sive, optional type. The seven optional plans adopted in that year will first be discussed in the order of their adoption.

*Wyoming.*—The Wyoming law,<sup>352</sup> approved on February 21, 1911, was the first commission law enacted in that year. It is applicable to all cities theretofore incorporated under special charters and having a population of ten thousand or more; to cities of the first class; and to cities and towns having a population of not less than seven thousand. The mayor of the city is required to submit, by proclamation, the question of adopting the plan to a vote at a special election, on "petition of electors equal in number to fifteen per centum of the number of registered electors". Should the proposition be rejected at the election, the question can not be again submitted within two years thereafter; and even then twenty-five percent of the voters are required to sign the petition. If the question has been favorably acted upon, the mayor is again required to call a special election for the election of mayor and commissioners. The law provides a governing body consisting of a mayor and two commissioners, to be nominated by petition and elected by a non-partisan ballot. They are the only elective officers and serve for a term of two years. The usual features of commission government, such as the division of departments, the appointment and removal of subordinate officers, and the publicity provisions are found in the Wyoming law.

The initiative, referendum, and recall are also provided in this law. By the law as amended in 1913 the initiative is made available on a petition of thirty percent of the registered voters; the referendum, on a thirty-five percent petition; and the recall, on a twenty-five percent petition. The council is prohibited from granting any public service franchise, if requested not to do so by petition signed by ten percent of the qualified voters of the city. In such a case the council, however, may submit the franchise ordinance to the voters at the next general or special municipal election. Sheridan and Cheyenne are the only cities in the State that have adopted the plan.<sup>353</sup>

*Montana.*—By a general law<sup>354</sup> approved on February 28, 1911, Montana cities of the first, second, and third classes are granted the optional right of adopting the commission form of

government. This law was slightly amended in 1913.<sup>355</sup> As usual, any cities can adopt the plan at a special election called upon petition of a certain percent of the voters. In Montana this is twenty-five percent; but this percentage is required to be based on registration, not upon the vote cast at the last preceding municipal election, as is usually the case. The governing body consists of a mayor and four councilmen in cities of the first class having a population of more than 25,000, and of a mayor and two councilmen in all smaller cities. Candidates for the primary election are nominated by petition of twenty-five voters; and the two candidates for mayor, and the four or eight for councilmen, receiving the highest votes are the candidates at the regular election. Both the mayor and the councilmen are elected for two year terms, with partial renewal. The provisions for a division of departments and for a civil service commission, as well as for the initiative, referendum, and recall, are practically the same as are found in the Iowa law—except that the percentage of voters required to sign the petitions for the initiative, referendum, and recall is based on the total number of registered voters. Only three cities in the State have thus far elected to come under this law.<sup>356</sup>

*Idaho.*—The Idaho commission law, approved on March 13, 1911, is applicable to any city within the State “organized under the general laws of the State, or under special charter, or under a general incorporation Act, now or hereafter having, as shown by the last preceding state or national census, a population of two thousand five hundred persons, or over that number.”<sup>357</sup> Upon a petition of the electors, equal in number to twenty-five percent of the votes cast for all candidates for mayor at the last preceding general city election, the question of adopting the plan may be submitted to the voters at a popular election; but, should the plan fail to be adopted at the election, the question may not be resubmitted within a period of two years. The law provides a council of five members, “one of whom shall be known, designated and elected as mayor, chosen and elected from the city at large.” Candidates are nominated by petition of at least twenty-five electors. It is specifically required that candidates, in order to be elected, must receive more than one-half of

the ballots cast. If no one receives the required number of votes, then the "first election shall be construed to have been a primary election for the nomination of candidates, and the second election shall be held to fill such office or offices."<sup>358</sup> When elected, the mayor is to hold the office for two years; while the tenure of office of the councilmen is four years, with partial renewal every two years.

The mayor "shall be considered as one of the council for all purposes and shall vote on all questions the same as any other member of Council." He presides at all meetings of the council, but has "no power to veto any measure, resolution, or ordinance".<sup>359</sup> Executive and administrative powers and duties are distributed among five departments: public affairs, accounts and finances, public safety, streets and public improvements, and parks and public property. The mayor is the superintendent of the department of public affairs, and the council at its first regular meeting after election designates by majority vote each of the other members to be superintendent of one of the departments.

The Idaho law specifically provides that "the people of such [commission] city, in addition to the method of legislation hereinbefore provided, shall have power of direct legislation by the initiative and referendum."<sup>360</sup> Both the initiative and the referendum are made available on petitions signed by a number of electors equal to twenty-five percent of the entire vote cast for mayor at the last preceding election. Initiative ordinances signed by ten percent of the voters may be submitted to a vote at the next general election. A unique feature of this provision is the affidavit attached to the petition whereby the signer declares that he has "read, or heard read at length, section by section, the proposed ordinance or measure attacked."<sup>361</sup> Another unique feature of the law is the provision that the "franchise will be awarded to the bidder offering to pay to the city during the life of the franchise the highest percentage of the gross annual receipts received from the use, operation or possession of the franchise."<sup>362</sup> The recall is made available on a thirty-five percent petition, but officials are immune from such proceedings for the first three months. Any city operating



under this plan may abandon it after six years trial at a special election called on petition of not less than twenty-five percent of the electors of the city. Lewiston has been operating under the commission plan since 1907 under a special charter. Boise adopted the commission form in 1912, and its charter conforms to the general law above outlined in all respects.<sup>363</sup>

*Washington.*—Washington is one of the so-called home rule States. By a constitutional amendment adopted in 1899 cities of 20,000 inhabitants or over are granted the privilege of framing and adopting their own charters.<sup>364</sup> Under this provision Tacoma and Spokane have adopted the commission form of government. But the application of the home rule charter system in Washington is very narrow: in fact, only five cities<sup>365</sup> of the State are entitled to the privilege. Accordingly, on March 17, 1911, the so-called Allen Act was approved,<sup>366</sup> which is a general commission law applicable to cities not included in the home rule provisions of the State. Any city having a population of from 2500 to 20,000 may adopt the provisions of this act by popular election called upon petition of twenty-five percent of the voters. It provides for a mayor and two commissioners, elected through the process of a non-partisan double election for terms of three years. The city clerk is the only officer in addition to the commissioners designated specifically in the act. The city commission is granted full legislative and administrative powers. The mayor is entrusted with special supervisory functions. He presides at all meetings of the council, but has no veto power.

This general law makes specific provision for the operation of the initiative and the referendum at special or general elections on twenty-five percent petitions. All ordinances, except those declared by unanimous vote of the commission to be emergency measures, are subject to a referendum. There was also a recall provision in the general law of 1911, but this part of the act was superseded<sup>367</sup> by a constitutional amendment in 1912 which incorporated the recall feature into the organic law of the State. By this constitutional amendment<sup>368</sup> the recall in Washington is extended to all local elective officers except judges of the courts of record. A recall election must be held upon the presentation

of a twenty-five percent petition in cities of the first class, and a thirty-five percent petition in other cities and towns.

Finally, the law provides that any city operating under this act for over six years can abandon the plan by popular election on petition of twenty-five percent of the electors. From the passage of the act to the present time only five cities<sup>66</sup> have elected to come under the provisions of the act. Tacoma, Spokane, and Everett have adopted the commission form under the home rule provision of the Constitution.

*New Jersey.*—In May, 1910, Governor Wilson sent a special message to the legislature of New Jersey urging the passage of a bill which would give the cities of that State the commission form of government, with the initiative, referendum, and recall. In this message he said that "the changes proposed are not experimental; they have been tested by abundant experience elsewhere, and I am sure that it would afford all thoughtful persons cause for serious disappointment if the legislature should not avail itself of the opportunity."<sup>67</sup> As a result of this message, the commission law of New Jersey, known as the Walsh law,<sup>68</sup> was passed and approved on April 25, 1911. The act as amended in 1912, 1913, and 1914 is applicable to cities, towns, boroughs, and other municipalities, and contains such features as are now commonly found in laws of this kind. It provides a commission of five members for cities of ten thousand population or over, and of three members for cities of smaller size. They are chosen simultaneously for terms of four years. The original law required the selection of candidates through primaries; but this feature was repealed by an amendment passed in 1914, which requires candidates to be nominated directly by petition, and also makes preferential voting compulsory in all cities operating under the provisions of the Walsh law.<sup>69</sup> At the first meeting after election, the commissioners elect from their own members a mayor, who shall be the presiding officer at the meetings of the commission but has no veto power.

"The board of commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the mayor and city council and all other executive or legislative bodies in said city, and

have complete control over the affairs of the city"; and such powers, duties, and authority are distributed among the five or three departments as the case may be.<sup>373</sup> The mayor is ex-officio the director of the department of public affairs; and the other directors of departments are designated by a majority vote of the commissioners at their first meeting.

The initiative can be invoked at the general election on petition signed by ten percent of the voters who cast a ballot at the preceding general election; and a fifteen percent petition may secure a special election. Any ordinance, except emergency measures passed by a two-thirds majority vote of the commission, is subject to a referendum vote within ten days of its passage on petition signed by "electors of the city equal in number to at least fifteen per centum of the entire vote cast at the last preceding general municipal election".<sup>374</sup> The recall is made available on petition of fifteen percent of the voters, but officials are immune from such proceedings for at least a year.

The act above analyzed may be adopted by any city at a popular election called on petition signed by twenty percent of the legal voters; and when adopted any city may abandon the experiment through the same process, but the petition must be signed by twenty-five percent of the electors. The people of New Jersey have been very enthusiastic in adopting the provisions of this act. Thirty-two cities<sup>375</sup> have already put themselves on record as commission-governed cities.

*Alabama.*—At the session of 1911 the legislature of Alabama passed a series of acts providing for the commission form of government in cities of various classes. Two of these laws, though general in form, are applicable only to the cities of Birmingham and Montgomery. They took effect without submission to a popular vote. But two other acts are optional and permissive in nature. The first of these was the act approved on April 8th, authorizing the adoption of the commission form in any city not within the sphere of any of the other commission laws of the State.<sup>376</sup> The question of adoption may be submitted to a popular vote on petition of a number of electors equal to one percent of the population, on the basis of the last preceding Federal census.

Under this act the governing body is a board of three members, to be elected one at a time each year for terms of three years. Candidates are nominated by petition of three percent of the voters, but party nomination is not forbidden. The system of preferential voting is incorporated into this law. The board determines the distribution of functions among its members, and assigns one of them to be the head of each particular department. The mayor is not elected as such, but is chosen by the board from among its own members; and his powers and duties are also determined and conferred by the board. A unique feature of this act is the provision that authorizes the Governor of the State to have the books of the city examined by the State examiner of public accounts, the expenses of the examination being paid by the city.

There is no provision for the initiative, nor is there any general provision for the referendum. But on petition of "a number of voters determined by the ratio of one to every three hundred inhabitants of the city upon payment by the grantee of a deposit to cover the estimated cost of a special election", franchise grants must be submitted to a popular vote. The recall is made available on petition of twenty-five percent of the voters. On petition of twenty percent of the voters, and after six years years of operation under this act, any city may abandon the plan and return to the old form of government by a favorable vote at a special election. Mobile is the only city that has taken advantage of this law since 1911. In fact, Mobile is the only city that comes under the provisions of this act,<sup>877</sup> but there is a series of acts providing the commission form of government for cities of different sizes.

Only fourteen days after the above mentioned law went into effect, another act providing commission government for cities having a population of more than one thousand and less than twenty-five thousand was approved on April 21st.<sup>878</sup> The question of adoption may be submitted in cities of the prescribed size on a petition signed by voters to the number of three to every one hundred of the population. The law provides for the appointment of the first commission by the Governor; but subsequent commissions are to be elected by popular vote. The

governing body is a board of three commissioners, including the mayor, elected for terms of three years with partial renewal annually. Candidates are nominated by a petition of voters equal in number to one to every hundred of the population. To be elected the candidate must receive a majority of votes cast; but if the first election fails to give any candidate such prescribed majority, a second election is to be held. No provision is made in the act for the initiative and referendum, but the recall may be invoked on a twenty-five percent petition. Since the passage of this act eight cities have elected to take advantage of its provisions.<sup>379</sup>

*California.*—California is one of the home rule States. The Constitution grants cities of 3500 inhabitants or over the right to frame and adopt charters of any nature drawn up by boards of freeholders, subject only to the ratification of the legislature. But cities of less than 3500 inhabitants are excluded from enjoying such privileges. In order to permit these small municipalities to adopt the commission form of government if they so desire, the legislature in 1911 passed an act granting them such authority.<sup>380</sup>

The law authorizes the boards of trustees of cities of the fifth and sixth classes to submit to the voters of their cities at any municipal or special election the question of dividing the administration of the city into five departments, of providing for the assignment of their several members as heads of such departments, and of defining the duties, powers, and responsibilities of each of the heads of departments. A majority of the votes cast at the election will carry the proposition.

Provision is also made that the trustees may submit the question of whether or not the officers who are at present elective, or any of them other than the trustees themselves, shall be appointed by the board. The names of the officers to be included must be specified on the ballot. If the proposition is carried at the election the specified officers shall be appointed on the expiration of the terms of the existing incumbents.

The adoption of both of the above propositions, in the language of the title of the act, "provides the so-called commission form of government". But thus far no city has seen fit to adopt the provisions of the act.

**Nebraska.**—By an act<sup>351</sup> approved on April 27, 1911, Nebraska entered the list of States in which commission government may be adopted by certain cities through the simple expedient of a referendum vote. The Nebraska act, known as the "Banning Law", is applicable to any city having a population of 5000 or over, and may be taken advantage of at a special election called within twenty days after the filing of a petition signed by twenty-five percent of the electors voting for mayor at the preceding city election. When adopted, the commission consists of three councilmen for cities of from five to twenty-five thousand; of five councilmen for cities of from twenty-five to one hundred thousand; and of seven councilmen for cities of more than one hundred thousand. Another unique feature of the law is that the term of the councilmen is not definitely fixed, but follows that prescribed in the old charter. As under the New Jersey law, the mayor in Nebraska commission-governed cities is not elected as such, but is chosen by the council from its own members.

The law provides for non-partisan primary nominations on petitions signed by twenty-five electors in cities of from 5000 to 25,000, and by one hundred electors, in cities of over 25,000. A filing fee paid to the city treasurer is required of every candidate to meet the expenses of holding the primary. Both at the primary and the regular election the names of the candidates are printed on the ballot according to the rotation system, so that each name appears in a different position on the ballot in each election district.

Administrative powers and duties are divided among the departments, the number of which corresponds to the number of commissioners. To each of these departments the council assigns, by majority vote, one of its members to be the head.

The initiative is made available on the basis of fifteen percent petitions for special elections and ten percent petitions for regular elections. The referendum is applicable to any ordinance except emergency measures which contain a statement of their urgency, on petition signed by fifteen percent of the voters. A recall election may be called on a thirty percent petition; but the percentage in this case is based on the highest vote cast

for any candidate for councilman at the last preceding municipal election.

Operation under the law may be abandoned after a four years trial, and the city may then return to the plan provided by the general laws of the State by vote of the people at a special election called upon petition signed by twenty-five percent of the voters. In Nebraska only four cities have adopted the commission plan.<sup>382</sup>

*New Mexico.*—As early as 1909, when New Mexico was still a Territory, a law was enacted allowing any city having 3000 inhabitants or over “to be governed by a mayor and not less than two commissioners nor more than four commissioners, all elected at large”, who, “when elected, shall organize and divide the government of the city into departments . . . and each department shall be presided over by either the mayor or a member of the commission.”<sup>383</sup> The commission was empowered to employ a superintendent of city affairs, who should have entire charge of the administrative functions of the city. This supervisor system was identical in all essential respects with the present commission-manager plan. By the Territorial law of 1909 the cities of New Mexico were granted the option of either adopting the supervisor system or the commission plan which was provided in the last section of the act.

The Territorial act of 1909 was repealed in 1913, when a general commission law was enacted by the legislature of the State of New Mexico. This is an optional permissive law, applicable to any city on adoption at a special election, conditioned on a twenty-five percent petition. The governing body provided for is the usual commission of three members, including the mayor. Their terms of office are three years. Each member takes up the administration and supervision of a particular department assigned to him by the commission as a whole. After four years trial in any city the plan may be abandoned by a vote at a special election conditioned on a twenty-five percent petition. The law makes no provision for the initiative, referendum, and recall.<sup>384</sup> Las Vegas, a city of about 4000 population, is the only city where the plan has been in operation since 1913.<sup>385</sup>

*Missouri.*—In 1913 the Forty-seventh General Assembly of Missouri passed two general laws providing for the commission plan of city government: one law was for cities of the second class, and the other was for cities of the third class. The commission law for cities of the second class is obligatory in nature and will be considered in another part of this chapter. The other act, entitled an act to provide “an alternative form of government”, is applicable to “any city of the third class including any such city acting under special charter or any city now having or which may hereafter have a population entitling them to become cities of the third class.”<sup>386</sup> The question of organizing as a city under this act may be submitted at a special election on petition of electors equal in number to twenty-five percent of the vote cast for all candidates for mayor at the last preceding city election.

The governing body provided by this act consists of a mayor and two councilmen for cities having a population of three thousand and less than twelve thousand; a mayor and three councilmen for cities having a population of twelve thousand and less than twenty thousand; and a mayor and four councilmen for cities having a population of twenty thousand and not more than thirty thousand. Candidates for mayor and councilman are nominated by a primary election at which any person can become a candidate by filing with the city clerk at least ten days before the election a statement of such candidacy; but in cities having a population of seven thousand or over, such statement must at the same time be accompanied by a petition of at least twenty-five qualified voters.<sup>387</sup>

The executive and administrative powers, authority, and duties are divided among the following departments: public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property. The mayor is the superintendent of the department of public affairs, and the council designates by a majority vote one councilman to be superintendent of each of the other departments; but in cities having a population of less than twenty thousand, one councilman may be assigned to take charge of the affairs of two departments.<sup>388</sup>



The initiative is made available at a special election on petition of twenty-five percent of the voters, and at a general election on a ten percent petition. Both the referendum and the recall may be invoked on petition of twenty-five percent of the voters. The appointment of a civil service commission of two members is obligatory in cities having a population of between twenty and thirty thousand, and optional in cities having a population of between ten and twenty thousand. But "in all cases in which no civil service commissioners are appointed by the council, the council shall have the same powers and duties devolving upon such commissioners."<sup>388</sup>

The plan may be abandoned by cities which have adopted it at a special election called in response to a twenty-five percent petition. Following the enactment of this law only four cities<sup>389</sup> in Missouri have elected to come under its provisions.

*Tennessee.*—On January 28, 1913, a meeting of mayors of Tennessee was held at Nashville to draft a bill permitting all the cities and towns of the State to adopt the commission form of government. A bill of this character was subsequently introduced into the legislature and written into the statute books of Tennessee in September of the same year.<sup>391</sup> The law is applicable to any municipality not yet incorporated under a special charter providing for the commission form, and may be adopted at a special election called on a petition of twenty percent of the voters. Operation under this act may be discontinued after six years trial by vote of the people at an election called in response to a twenty-five percent petition of the voters.

The governing body under this act is a commission of five members, elected for terms of four years, for cities having a population of 10,000 or over, and of three members for cities having less than 10,000 inhabitants. The mayor is chosen by the commissioners from among their own number; and by a majority vote the commission assigns the different departments to its members. There are provisions for the initiative and referendum, but none for the recall. The initiative and referendum may be invoked on petition of fifteen percent of the electors voting at the preceding election; but within a period of six months only one special election can be called. The refer-

endum is not applicable to measures declared by a two-thirds vote of the commissioners to be emergency measures.

In Tennessee there are at present about thirteen cities operating under the commission form of government, but most of them have adopted the new plan under provisions of special acts. Only one city, Lawrenceburg, has elected to come under the provisions of the general law above outlined.<sup>393</sup>

*Arkansas.*—In 1913 a general optional commission law was enacted in Arkansas.<sup>394</sup> It is applicable to cities having a population of between 18,000 and 40,000. The question of adoption may be submitted on petition of twenty-five percent of the number of votes for Governor at the last preceding election. The government of the city under this plan is vested in a mayor and four commissioners, elected by the city at large for terms of four years. Candidates are required to designate on the ballot the departments which they respectively prefer.

The city commission is required by the law to appoint a civil service commission of three members. By a two-thirds vote of the civil service commissioners, any of the city commissioners may be removed. The city commissioners may also be removed by the recall election, which may be invoked on petition of thirty-five percent of the number of voters at the preceding general municipal election. The initiative is made available at a special election on petition of twenty-five percent of the voters, and at a general election by fifteen percent petition. The original law provides for a referendum only on franchises, which may be invoked on a twenty-five percent petition. But by another law a municipality may submit its ordinances to a referendum vote on petition of twenty percent of the voters. Certain ordinances, like those providing for the support of the city government, for deficiencies in former appropriations, for the granting of police powers, and for other emergencies are exempt from such proceedings. It is further provided that before the submission of an ordinance to a referendum vote, the Secretary of State must be requested to give his opinion as to whether the ordinance in question is in conflict with the Constitution or laws of the State. Fort Smith is the only city in the State which has taken advantage of the law since 1913.<sup>395</sup> In

fact, the commission law in Arkansas was framed primarily for the benefit of Fort Smith.

*Nevada.*—In 1915 the State of Nevada was added to the long list of States which have already enacted commission government laws. But the Nevada law<sup>100</sup> differs from all the laws heretofore considered in that it enables the city or town not only to adopt the commission form of government but also to frame its own charter. At the same time, it differs from the so-called "home rule" States in that the home rule charter system in Nevada is provided not by constitutional amendment but by legislative enactment, and further, that the charter framed in Nevada must be a commission charter. Thus, the situation in Nevada in this regard is rather unique. There is a law enabling any city or town to adopt the commission form of government, but this is nothing more than an enabling act. All the details of the charter are left to be worked out by the city itself. The procedure in charter-making, however, is minutely prescribed in the law.

On petition of one-fourth of the qualified voters of the city declaring their desire to adopt a commission form of government, an election may be called to select fifteen qualified electors for the purpose of framing a charter for such city or town, having for its object the establishment of the commission form of government. Candidates are nominated by petition of one-fifth of the qualified voters, and elected by the city at large. When elected they must convene within ten days after the election and frame the charter, which must be submitted within thirty days thereafter to the legislative authority of the city.

The proposed charter must then be published in the newspapers of the city, or posted for thirty days in three of the most public places in the city if there is no newspaper. When the affidavit of the publisher or of the person posting the notice has been filed with the city clerk, showing compliance with the above provision, the legislative authority must within five days thereafter provide for the submission of the charter to the qualified voters of the city at a special election, which is to be conducted in accordance with the general election laws of the State.

If after the election it is found that a majority of the votes are in favor of the ratification of the charter, it shall become the organic law of the city and shall supersede any existing charter when properly authenticated, recorded, and attested.

Finally, the law provides that any city or town having adopted such a charter shall have "all of the powers enumerated in the general laws of the state for the incorporation of cities and towns, and such other power necessary and not in conflict with the constitution and laws of the State of Nevada to carry out the commission form of government; and such charter, when submitted, shall fix the number of commissioners, their terms of office, and their duties and compensation, and shall provide for all necessary appointive and elective officers, for the form of government therein provided, and fix their salaries and emoluments, their duties and powers, and shall fix the time for the first and subsequent elections for all elective officers, and after such first election and qualifications of the officers thereat elected, the old officers, and all houses, boards, or officers shall be abolished, together with the emoluments thereof, and shall cease to exist."\*\*\*

Amendments to the charter may be proposed and submitted to the qualified voters by a majority of the commissioners at any time. But the commissioners must submit amendments when petitioned so to do by ten percent of the qualified electors voting at the last regular city election, setting forth the proposed amendment. But thus far, this law has not been taken advantage of by any city or town of the State.

#### STATES WITH OBLIGATORY SELF-EXECUTING COMMISSION LAWS

*Utah.*—As early as 1907 the State of Utah made its first attempt to secure a commission government law from the legislature. But the opposition of the dominant political party to a change from the old form of government was so strong that the bills introduced were smothered in the committee. Again, in the fall of 1909 a committee was sent by the Civic Improvement League of Salt Lake City to Des Moines to investigate and report on the results of the commission government there. Favorable reports of this investigation were soon published, and bills

modelled on the Des Moines plan were introduced into the legislature in 1909. This time the bills passed the legislature, only to be vetoed by the Governor. In 1911 a third attempt was made in which the friends of the commission plan were successful. The bills were passed and received the Governor's signature. But in order to gain this end the initiative, referendum, and recall were all eliminated.<sup>397</sup>

The peculiar feature of the Utah law<sup>398</sup> is that it places all incorporated cities of every class under a commission form of government, and that the cities are given no option in the matter, as the law is self-executing and requires no vote to put it into effect. The law specifically provides that "the municipal government of all cities of the first class is hereby vested in a board of five commissioners, consisting of a mayor and four commissioners, and in cities of the second class in a board of commissioners, consisting of a mayor and two commissioners to be known as the board of commissioners of their respective cities. The municipal government of all cities of the third class is hereby vested in a mayor and city council. The city council shall be composed of five councilmen, chosen at large by the qualified voters of the city."<sup>399</sup>

Provision is made for the election of a city auditor, instead of providing for his appointment by the commissioners. Partisan nominations may be made by a convention, but all candidates must file a petition of nomination signed by one hundred voters. At the primary election candidates equal to twice the number of offices to be filled are chosen, and they are the only candidates at the general election. When elected the mayor and commissioners of cities of the first class, the commissioners of cities of the second class, and one councilman of cities of the third class are to hold office for four years; and the mayor of cities of the second class, four councilmen of cities of the third class, and the auditor are to hold office for two years.

The board of commissioners possesses and exercises all legislative, executive, administrative, and judicial powers, which are distributed among the usual five commissioner-departments: public affairs and finance, water supply and waterworks, public safety, streets and public improvements, and parks and public

property. At its first regular meeting the board designates by a majority vote one of its members to be the superintendent of each department, but "such designation shall be changed whenever it appears that the public service shall be benefited thereby".

By this law, which became effective at the beginning of the year 1912, all the incorporated cities of every class in the State of Utah were placed under the commission form of government.

*Alabama.*—In Alabama there is a series of commission laws, all passed during the legislative session of 1911. Two of these laws, which have already been analyzed, are permissive in nature; while the others took effect without any submission to a popular vote. The first of these mandatory acts<sup>400</sup> is one relating to cities of 100,000 inhabitants or over. This act, though general in form, is applicable only to the city of Birmingham as this is the only city in the State that has the requisite number of people. Under this act the first board of commissioners was to consist of the mayor of the city at the time when this act was approved, who was to hold office for two years, and two other commissioners appointed by the Governor for terms of three and four years, respectively. At the expiration of the terms of the first commissioners, their successors are to be nominated by petition and elected by the people. A second election is to be held within one week, if the first election fails to give any candidate a majority of the votes cast. The terms of these elective commissioners are three years, with partial renewal annually. No provision is made for the initiative and referendum, except on franchises; but recall elections on petition of three thousand qualified voters are made applicable to the commissioners.

Another act<sup>401</sup> of a similar nature was passed about the same time. This act related to cities having a population of more than twenty-five and less than fifty thousand. Like the other act, this law is applicable only to the city of Montgomery. The mayor at the time of the passage of this act was to be the ex-officio mayor for four years; and he, together with four commissioners appointed by the Governor, constituted the first board of commissioners. All the other provisions relating to the commission are practically the same as the provisions in the act discussed

above. There is no initiative provision, but the referendum is made available on a twenty-five percent petition, and the recall on petition of a thousand voters. Unlike the act for Birmingham, which can only be repealed by legislative enactment, the commission government under the act for Montgomery can be abandoned, after four years of operation, by popular vote at an election called upon petition of one thousand voters.

*Pennsylvania.*—In Pennsylvania<sup>402</sup> the commission form of city government was first considered in 1908, when there were but twelve cities in the country operating under this plan. In 1909 the subject was favorably considered by the Chamber of Commerce of Pittsburg. A convention was held in October, 1910, at Williamsport for the purpose of discussing commission government, and a permanent organization under the name of "Municipal Government by Commission Committee of Allied Civic Bodies of Pennsylvania" was immediately formed. In the next year bills were presented to the legislature providing for the commission plan of government for cities of the second and third classes, but the legislature declined to pass the measures. The reform movement, however, did not die with these bills. Great pressure was brought to bear upon the legislature by cities of the second class; and as a result Pittsburg and Scranton received the benefits of some features of the new plan. The cities of the third class continued the effort to secure the commission form, largely through their respective civic organizations, acting under the direction of the Allied Civic Bodies Committee. In 1913 another bill was presented to the legislature; and this measure passed both houses and was approved on June 27th.<sup>403</sup>

The law<sup>404</sup> provides for the commission form of government for all cities of the third class without a local referendum for its adoption, and therefore affects every city in Pennsylvania except Philadelphia, Pittsburg, and Scranton. By another act approved on July 8th, this law is also made applicable to the forty-two boroughs of the State having a population of over 10,000 by being submitted to a vote at a special election on petition of one hundred qualified electors or by resolution of the council or the corporate authority of such borough.

The governing body provided by the law is the council, composed of the mayor and four councilmen. On petition signed by twenty-five qualified registered voters of the city, the name of any person may be proposed for any elective municipal office, and may be placed on the primary ballot in the order to be determined by drawing lots. The persons receiving the highest number of votes, up to double the number of persons to be elected, are the only candidates at the regular election. Both primary and regular elections are conducted on a non-partisan plan. When elected the mayor holds his office for four years and the councilmen for two years. The controller is the only other elective officer besides the mayor and the councilmen, and he is elected in the same way and holds office for four years. All other officers, including the city solicitor, city engineer, city treasurer, city assessor, and city clerk are appointed by the council for terms of two years. There is no civil service provision in the law.

The legislative power of every city of the third class is vested by the act in the council; while the executive and administrative powers, authority, and duties are distributed and divided among five departments: public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property. The mayor is ex-officio superintendent of the department of public affairs, and the council designates by a majority vote each of the members to be superintendent of a particular department.

A rather peculiar provision for the salaries of the mayor and councilmen is to be found in the Pennsylvania law. It provides that the council shall, by ordinance, fix the amount of the salary to be paid to the mayor and the councilmen for their services, but the salary paid to the mayor shall not be less than five hundred dollars nor more than three thousand five hundred dollars per year; and that for any councilman not less than two hundred and fifty nor more than three thousand dollars per year.<sup>405</sup> This provision, as Mr. Fuller and some of the other originators of the law have frequently pointed out, has this advantage, "that the flexibility of the plan will enable the cities of the third class to adopt the City-Manager or Business-Man-



ager plan of city-government, if they so desire, and add but little to the cost of administration"; because, by fixing the salaries of the mayor and councilmen at the low figure, it is feasible to devote the amount thus saved to the salary of the manager.<sup>406</sup>

The law makes no provision for the recall; but the initiative and referendum are made available either at special or general elections, on a petition signed by voters equal in number to twenty percent of all votes cast for all candidates for mayor at the last preceding municipal election. In order that an initiative petition may be circulated, a written request for it must be filed with the city clerk, signed by one hundred qualified electors and asking that a petition be prepared. All ordinances, except those for the immediate preservation of the public peace, health, or safety, containing a statement of urgency, are subject to a referendum vote within ten days after their final passage.

*Missouri.*—The Missouri commission law for cities of the second class is obligatory in nature.<sup>407</sup> It specifically provides that every city of the second class "shall be governed by a council, consisting of the mayor and four commissioners." The council "shall exercise the corporate powers of such city, and shall be vested with all powers of legislation in municipal affairs, touching every object, matter and subject within the purview of the local self-government conferred upon every city of the second class, not inconsistent with the Constitution and laws of the State of Missouri, and of this article." Again, the council "shall have control and supervision over all the departments of the city . . . and to that end, shall have power to make and enforce such rules and regulations as they may see fit and proper for the organization, management and operation of all the departments of the city, and whatever agencies may be created for the administration of its affairs."<sup>408</sup>

The executive and administrative powers and duties are distributed among five departments: safety and public affairs, revenues, public health and sanitation, streets and public improvements, and public property and public utilities. The mayor is required by law to be the commissioner of the department of safety and public affairs; and the commissioners of

other departments are elected as such. The mayor, the commissioners, together with a municipal judge, are the only elective officers. Candidates are to be nominated at a primary at which any person can become a candidate by paying, at least ten days before, "a filing fee of ten dollars to the city clerk", and filing "with said clerk a statement of such candidacy". All the elective officers are to hold office for four years, but may be removed at any time through the process of recall election, which is made available on a petition representing twenty percent of the entire vote cast for mayor at the last preceding general election of the city. The initiative is included on the basis of a five percent petition, but a fifteen percent petition may call for a special election. All ordinances except those passed by a four-fifths vote of the council as emergency measures are subject to a referendum vote upon petition of ten percent of the voters, but referenda on franchises and on the sale of municipal utilities owned by the city are compulsory.

The mayor is required to appoint, with the advice and consent of the council, a civil service commission of four members for terms of four years. It is the duty of this commission to provide "for the classification of all employments in the various city departments of administration . . . for open, competitive, and free examinations as to fitness; for an eligible list from which the vacancies shall be filled; for a period of probation before employment is made permanent; and for the promotion on the basis of merit, experience and record."<sup>400</sup>

#### STATES WITH OPTIONAL MODEL CHARTER LAWS

*Ohio.*—In 1912 Ohio, by a constitutional amendment, granted to all cities the privilege of framing their own charters. In fact two methods for securing city charters are provided in the Constitution of Ohio as amended in 1912. The first method calls for a commission to draft a charter to be adopted or rejected by the electorate of the municipality; while the second one provides for the passage by the State legislature of general laws for the incorporation of cities and villages which shall become operative when they are submitted to and ratified by the people of the municipality.<sup>410</sup> Under the second plan the legislature in 1913

passed. "An Act to provide optional plans of government for municipalities and permitting the adoption thereof by popular vote."

This model law of Ohio carries out the so-called "triple-option" method, embodying three different forms of city government—the commission plan, the city manager plan, and the federal plan. Any one of these plans may be adopted by any city at an election called in response to a petition signed by electors of the city "equal in number to ten per centum of those who voted at the last regular municipal election".<sup>411</sup> The petition must specify the form of government to be voted upon; and if the proposition of adopting one of the three plans of government is approved by a majority of those voting thereon, that plan "shall go into effect upon the first day of January following the next regular municipal election".<sup>412</sup> Should the proposition of adopting one of these plans fail to be approved by the electors of the municipality, the same proposition can not be again submitted within the next year. "Any municipality which shall have operated for five years under any plan provided in this act may abandon such organization" in favor of another plan by popular election demanded by a ten percent petition.<sup>413</sup> Under the commission plan of this model charter law there is to be a commission of three members for cities having less than 10,000 inhabitants, and of five members for other cities. All the commissioners are elected on a non-partisan basis and from the municipality at large. They are to hold office for four years. The commission is vested with all "powers conferred upon municipalities by the constitution of Ohio, and any additional powers which have been or may be conferred upon municipalities by the General Assembly". The commission is required to meet in legislative session at least twice each month and in administrative session at least once each week, but "no legislative business shall be considered or acted upon at administrative sessions". Administrative officers, including a clerk, a treasurer, an auditor, and a solicitor, are enumerated in the law, and provision is made for the appointment of these officers by the commission. But the commission also has authority to "create and discontinue departments, offices, and employments; to ap-

point or provide for the appointment of all officers or employees of the municipality; to remove any such officers or employees by a majority vote of all members". There is no provision made in the law for the division of administrative work into departments, but the commission "may, at its discretion, assign the direction or supervision of particular departments or branches of the government to individual commissioners; but such action shall in no manner release the commission as a whole from responsibility or the condition of any department or branch of government so assigned."<sup>44</sup>

Provision is made for a civil service commission of three members to be appointed by the commissioners. The initiative and referendum, as provided in the general law, are provided for in the commission plan as well as in the other plans. Both are available on a ten percent petition. But the recall is left optional, the voters are required to vote for or against it at the time when they vote on the question of adopting the new plan.

Thus far, Middletown is the only city adopting the straight commission plan as provided for in this optional charter law.<sup>45</sup>

*Virginia.*—By an optional law approved on March 13, 1914, certain cities of Virginia were granted the same privileges and put in the same position as cities under the model charter law of Ohio. The Virginia law empowers any city of the State having a population of less than 100,000 (thus excluding Richmond) to adopt one of the three specified forms of government as provided in the act at a special election called upon petition of twenty-five percent of the electors qualified to vote at the last preceding municipal election. These three plans are the general councilmanic plan, the modified commission plan, and the city-manager plan.<sup>46</sup>

The so-called modified commission plan is not, after all, very much modified. Under it all the legislative, administrative, and executive powers of the city are conferred on a council of three or five members—the number to be determined by the voters of the city at the time when that particular plan of government is adopted. They are elected at large and on a partisan ballot, and hold the office for four years. With the exception of those

officers whose election by popular vote is required by the Constitution of the State, these councilmen are the only elective officers of the city. The mayor is elected by the council from among its own members. His chief function is to preside over the meetings of the council. He has no veto power, but possesses all the rights and duties of a councilman. The law requires him to "acquaint himself with the conduct of each of the city departments (in addition to those under his immediate supervision) and from time to time report to the council thereon, with such recommendations as he shall deem desirable".<sup>417</sup>

Administrative duties are distributed among departments. The council designates the administrative duties of its members and assigns each member to the headship of a particular department or departments, over which he has special oversight and direction, subject to the provisions of the act and the ordinances of the council.

The original law did not provide for popular control through the initiative, referendum, and recall. But in an amendment to the law, enacted by the legislature in March, 1916, these powers of popular control were made available. The following significant statement is found in Section 16 of this act of 1916:

Provisions authorizing the use by the electorate of the powers of the Initiative, the Referendum and the Recall, being essential features of many forms of city government in which all powers of government are concentrated in the hands of a small body of men, the electors of any city of the Commonwealth which has already adopted, or which may hereafter adopt, any form of government authorized under this act may incorporate as part of such form of government provision for the exercise by them of any one or more of the powers above mentioned by proceeding in the manner hereafter prescribed.<sup>418</sup>

Thus, upon petition of ten percent of the voters in any city where the commission form of government is in operation, or in which it is proposed to adopt such a plan of government, the question of incorporating into the new form provisions for the initiative, referendum, and recall must be submitted to the voters at an election. If the question is decided in the affirmative at such election, the initiative, referendum, and recall must be included in the charter and made available, each upon petition of ten percent of the qualified voters.

Thus far the commission plan of Virginia's optional charter law has not been adopted by any city of that Commonwealth.

*New York.*—Largely through the efforts of the Municipal Government Association, an optional city charter law was passed by the legislature of New York in 1914. As indicated by its title, the law was enacted "to authorize a city of the second or third class to adopt a simplified form of government."<sup>42</sup> It provides seven types of charters, including the commission, city-manager, and the federal plans, each of which may be adopted by any city of the second or third class if a majority of its voting citizens so desire. On presentation of a petition signed by ten percent of the voters who voted at the preceding general election, requesting the submission to vote the question of adopting a specified form of government as provided in the act, the common council of the city must designate a day not less than one month nor more than two months thereafter, "for the holding of a special election to ascertain the will of the electors regarding the question", or submit the question to the general city election, if there is such an election not more than three months nor less than one month after the filing of the petition. Through an election, if a majority of the voters voting thereon favor the adoption of the specified plan submitted to them, such plan shall become operative when the officers provided in the act are duly elected.

Among the plans provided in the act, Plan A and Plan B are of special interest in this connection. These two plans are entitled, respectively, government by a limited council or commission with division of administrative duties, and government by a limited council or commission with collective supervision of administration. Under both plans, the governing body is a council of five members, elected at large and holding office for four years, with partial renewal biennially. But in cities of less than 25,000 inhabitants, the voters are allowed to choose between a council of five members and a council of three members. In both cases there is a mayor elected as such, who acts as the head of the city merely on ceremonial occasions. He presides at the meetings of the council and exercises a general supervision over all the departments, but has power only to make recommenda-

tions. He votes just as do the other members of the council, but has no veto power. Under both plans the council is vested with and exercises "all the legislative, executive and administrative powers of the city howsoever conferred upon or possessed by it".

Thus far these plans are exactly the same. The chief difference between them is simply the difference in the amount of actual work required of the members of the council. Plan A requires the council to divide the administration of the city into departments and to assign each of its members to the headship of a particular department or departments. Under Plan B the council acts merely as a board of directors and chooses other officials to direct the work of the administrative departments. Although there is the same departmental division under both plans, the individual members of the council under the second plan do not serve as heads of departments as under the first plan, these positions being filled by appointments by the council.

Watertown is the only city in the State that has adopted (in 1915) the commission plan under this optional charter law. But even here the law did not take effect until January 1, 1918.<sup>480</sup>

*Massachusetts.*—The desire of the Massachusetts cities to break their legislative shackles and of the legislature to escape the burden of passing upon numerous special local bills led to the enactment of an optional city government law<sup>481</sup> which was approved on May 29, 1915. This optional charter law had its origin in a recess legislative committee known as the "Doyle Committee", appointed in 1914 to "investigate the subject of charters and laws for governing cities, and providing a standard form of charter for the government of cities both by commission and otherwise, and any other matters which the committee may deem pertinent in regard to the subject of city laws and charters."<sup>482</sup> In the following January a report offering four types of government—including government by a mayor and council elected at large, government by a mayor and council elected at large and by districts, the commission form, and the city-manager plan—for adoption by Massachusetts cities, Boston

excepted, was issued; and a general law conforming to this report was soon passed.

Under the commission plan of this law there is provided a city council of five members, including the mayor, elected for a term of two years and partially renewed each year. The administrative functions of the city are divided among five departments: administration, finance, public works, public property, and health. Each commissioner is elected for a specific department, that of the mayor being administration. The council as a whole has general jurisdiction over the policies and work of each department; but each commissioner has full power concerning matters affecting his own department, and appoints and removes the subordinate officers in his department, subject to confirmation by the council. Thus, at the present time any city in Massachusetts, with the single exception of Boston, can adopt the commission form at its option. But thus far the plan has not been utilized by any city.

#### STATES WITH A CONSTITUTIONAL HOME RULE CHARTER SYSTEM

At the present time there are twelve States which have incorporated into their fundamental laws the so-called home rule charter system. There are considerable variations, both in the methods and in the machinery of home rule charter-making, which have perhaps little bearing on the subject under consideration. It will be sufficient here to indicate that this system permits cities having the requisite population, through conventions or boards of freeholders, to frame their own charters. These charters are then adopted, either without reference to the Commonwealth government or after a submission of the scheme of government to the legislative or executive branch for its approval. After their adoption the charters are not subject to amendment by the legislature of the State through the passage of either general or special legislation. The only limitation on the governments of the various cities which are entitled to draw up their own charters is that the charters must be consistent with and subject to the laws and Constitution of the State of which they form a part. Thus, in so far as there is no specific prohibition in the Constitution or general laws of the State against



providing any form of government except the old mayor and council type, these so-called home rule cities may draw up commission charters if they so desire. It is the purpose of the following pages to examine and analyze some of the typical home-rule commission charters. Each of the home rule States will be taken up in the chronological order of its adoption of the system.

*Missouri.*—Missouri was the first State to incorporate the home rule charter principle into the American legal and constitutional system. Indeed, the home rule charter system is often spoken of as the "Missouri Idea". By the Constitution of 1875, cities having a population of 100,000 or over are permitted to frame and adopt their own charters.<sup>422</sup> But inasmuch as there are only at the present time two cities in the State having the requisite population, the possibility of home-made commission charters in Missouri is very small. Thus far, no city in Missouri has ever adopted a commission charter under the home rule provision of the Constitution.

*California.*—By a constitutional amendment in 1879 the State of California granted the right to frame the city charter to any municipal corporation containing a population of more than one hundred thousand—which meant San Francisco alone. But the privilege of drafting the city charter has been extended by constitutional amendment in 1887 to cities having a population of ten thousand, and in 1890 to any city in the State containing more than three thousand five hundred inhabitants. But in all cases the right has been reserved to the legislature to approve or reject the charter as adopted, but without the power of amending it in any way. With the exception of this limitation practically any city in California can adopt a charter of its own drafting.<sup>424</sup> Indeed, the extensions of the application of the home rule charter system, made by the successive constitutional amendments, resulted in a larger increase in the number of municipal-made charters in California than in any other Commonwealth in which such a system is now in vogue.

"The commission form of government was taken up in 1909 by Berkeley and San Diego, [and by] the former the most

advanced features, the non-partisan nomination and majority election, of the Des Moines plan were copied with progressive modifications. The Berkeley election plan permits a majority on the first ballot to elect without further contest. At the regular session of 1911 the legislature ratified eight charters of which six, including that of Oakland, the largest city in the country to adopt the commission plan so far [1912], provided for that form of government . . . . At the special session of 1911 two more charters, both of the commission variety, were presented to the legislature from Stockton and Sacramento. The latter provides for the shortest of ballots, one only of the five commissioners being chosen each year."<sup>455</sup> The examples set by these cities were soon followed by San Mateo in 1912; Pasadena in 1913; Napa and Alhambra in 1915; and Santa Monica in 1916.<sup>456</sup>

*Washington.*—In Washington cities of twenty thousand inhabitants or over have the privilege of drawing up their own charters.<sup>457</sup> In the case of *Walker v. Spokane*<sup>458</sup> it was held that "the only limitation on the part of the powers of the city government to enact laws through the medium of a charter is that they shall be in accordance with general law", and that a charter establishing the commission form of government, with the initiative, referendum, and recall, does not violate any statutory law. But due to the narrow application of the home rule charter system, there has been no considerable growth of city-made charters in Washington. Thus far, only five cities—Seattle, Tacoma, Spokane, Bellingham, and Everett—are entitled to enjoy the privilege of framing their own charters, and all except Bellingham have already adopted home rule charters. With the single exception of Seattle, all the home rule charters in Washington provide the commission form of government. In Seattle, a city-manager charter was drawn up, but was defeated at a special election held on June 30, 1914.<sup>459</sup>

Tacoma<sup>460</sup> was the first city in Washington to draw up a home rule commission charter, which was adopted on October 16, 1909; and was followed by Spokane on December 28, 1910, and Everett on April 16, 1912.<sup>461</sup> All these charters provide for a commission of five members—except in the case of Everett

where there are only three commissioners—elected as candidates for the executive departments prescribed in the charter. In the Spokane charter<sup>433</sup> there is a provision for the preferential system of voting. By this plan there is a complete unification of primaries and elections, the commissioners being chosen by a single process of voting and in proportion to the number of their respective supporters. Nomination is made by petition signed by not less than twenty-five electors. Both the nomination and the election are non-partisan, and at the election the voter may indicate his first and second choices, although he is not compelled to do so. In all of these three charters provision is made for the initiative, referendum, and recall.

*Minnesota.*—Minnesota was the fourth State in the Union to permit cities to frame charters for their own government. The "Missouri Idea" was introduced into the State by the constitutional amendment of 1896.<sup>434</sup> The contents of the amendment of 1896 were copied from the Missouri Constitution of 1875 with only a few changes. But instead of limiting the privilege of home rule to cities having a certain population, the Minnesota plan is applicable to any city or village in the State. The Constitution, however, also provides that "it shall be a feature of all such charters that there shall be provided, among other things, a mayor, or chief magistrate, and a legislative body of either one or two houses". Thus, there was doubt at one time as to whether or not a commission charter could be drafted under these provisions of the Constitution.

To clear up this uncertainty the legislature in 1909 passed a law specifically conferring on the charter board the power to draw up a commission charter.<sup>435</sup> The board of freeholders is also authorized to make provision for the election of the commissioners at large, for the apportionment of the administrative duties among the commissioners, for non-partisan primary nomination and election ballots, and for the initiative, referendum, and recall.<sup>436</sup>

This freedom enjoyed by the board of freeholders in drafting the city charter is the chief characteristic of the home rule charter system. The commission plan may be incorporated in its most progressive or least progressive form: the decision rests

with the board of freeholders in the first instance and with the voters of the city in the final instance. As one writer says: "The Minnesota law is a model or a failure depending largely upon whether or not the critic or judge is a believer in home rule for cities or a believer in centralization with state supervision, regulation and control."<sup>436</sup>

The first cities in Minnesota which took advantage of the provisions of the Constitution and statute were Mankato, Faribault, and St. Cloud. All except St. Cloud adopted, in 1911, plans providing for a commission of five members, one of whom should be the mayor; while the commission is given all the governmental authority of the city, both executive and legislative.<sup>437</sup> St. Cloud provided for a commission of three members. On December 3, 1912, Duluth voted to adopt a new charter embodying the commission form of government, with the initiative, referendum, and recall, and providing for election according to the preferential system of voting. The governing body is known as the city council, composed of a mayor and four councilmen and vested with all the legislative and executive authority of the city.<sup>438</sup> The examples of Duluth and other cities were soon followed by St. Paul and Tower in the same year; by Eveleth and Pipestone in 1913; and by Two Harbors in 1915.<sup>439</sup> Minneapolis failed to adopt a charter providing for the commission form of government in September, 1913.<sup>440</sup>

*Colorado.*—The next State to incorporate the home rule charter system into its Constitution was Colorado.<sup>441</sup> In 1902 the most radical home rule constitutional provision to be found anywhere in the United States was adopted. Section six of the twentieth article of the Constitution, as amended in 1912, has granted municipalities of 2000 inhabitants large powers over their own affairs, especially the authority "to propose for submission to a vote of the qualified electors proposals for charter conventions and to hold the same, and to amend any charter".

Under this provision Colorado Springs and Grand Junction in 1909 drafted and adopted home rule charters embodying the commission form. The charter of Colorado Springs<sup>442</sup> was drafted by a charter convention and adopted at an election held on May 11, 1909. It provides a council of five members

including the mayor, which has all the legislative powers of the city when acting as a deliberate body and exercises all the executive and administrative powers, authority, and duties; while each member of the council acts as head of a specified department assigned to him by the council. The members of the council are elected for terms of four years. The election provision is very interesting. There is no primary election, but the first election is final in case the candidate or candidates receive a majority of the votes cast for the office or offices. If no one receives the requisite vote a second election is held at which only the names of the two candidates receiving the highest number of votes at the first election are placed on the ballot. Provision is also made in this charter for the initiative, referendum, and recall. The initiative and referendum are made available at special elections on a fifteen percent petition, and the recall on a thirty percent petition.

The Grand Junction plan<sup>443</sup> is of special interest to students of political science, because it incorporates into the commission plan of government the system of preferential voting. It provides for non-partisan nominations by twenty-five individual petitioners. The ballots used at the election must be of such a nature that the voters can express several preferences or choices for officials. The ballot contains three columns opposite the names of each candidate, headed "First Choice", "Second Choice", and "Other Choices". The voters are enabled to vote against candidates as well as for the candidates of their choice. "To vote against a candidate, omit any cross opposite his name, and you thereby place him one vote behind all candidates voted for. To vote for a candidate, make a cross in the appropriate column opposite his name, voting for the first choice in the first column, for the second choice in the second column, and for as many other choices as the voter may have for any office in the third column. Only one choice can be voted for one person, and only one first and one second choice."<sup>444</sup>

The government provided by the charter is administered by a commission of five members, elected through the system of preferential voting above indicated for a term of four years, with two or three members retiring every two years. Each

commissioner is nominated and elected to the headship of a specific department. The departments are: public affairs, finance and supplies, highways, health and civic beauty, and water and sewers. The initiative may be invoked at a general election on a petition representing five percent of the vote cast at the preceding election in the city for all candidates for Governor, and at a special election on a ten percent petition. The referendum and the recall are made available on twenty percent petitions.

In 1913 the charter of the "City and County of Denver", adopted in 1904, was amended so as to provide the commission form of government for that political area; but this plan was discarded by the voters on May 9, 1916, when the mayor and council plan was restored.<sup>445</sup> Other cities in Colorado which have adopted home rule commission charters are Pueblo, Colorado City, and Fort Collins.<sup>446</sup>

*Oregon.*—Oregon has also fallen into line, taking up the home rule movement in 1901 when a constitutional amendment was proposed by a legislature authorizing the law-making body of the State to grant to all cities the right to frame charters for their own government by means of a board of freeholders and popular ratification. Although this proposal was passed and ratified by the legislature in 1901 and 1903, it was not submitted to the people for ratification. In 1906 a constitutional amendment proposed by an initiative petition was adopted authorizing the State legislature to provide for a system of home rule charters for all the cities of the State. Legislative action to carry out the provisions of this amendment was taken in the next year.<sup>447</sup> It is under this authority that a number of municipalities in Oregon have adopted the commission form and the commission-manager plan.

The first city in Oregon to take advantage of the provisions of the Constitution and law by adopting a commission form of government was Baker, which began its career under the new plan in October, 1910. The Baker charter<sup>448</sup> provides for the election of three commissioners, including the mayor, to particular departments and for a term of two years. Other provisions of the charter are non-partisan primary nominations, the safe-

guarding of majority elections, and the incorporation of the State law regarding the initiative, referendum, and recall. The second charter of Portland,<sup>449</sup> which went into effect on July 1, 1913, embodies the commission form of government. Under this charter the government is vested in a mayor and four commissioners elected through the system of preferential voting, and for terms of four years. The mayor is vested with power to assign the departments to particular commissioners. The initiative, referendum, and recall are all provided in accordance with the State law.

*Oklahoma.*—In 1907 Oklahoma was admitted into the Union. In the Constitution<sup>450</sup> there is a clause providing for the home rule charter system, according to which "any city containing a population of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state." Under this constitutional provision, over twenty cities have framed and adopted commission charters. It has been said that "there is no city of 4000 or over inhabitants in the state which has not that form of government. This change has all come with the past five years; Tulsa being the first, the larger cities following, and the smaller ones changing from the aldermanic to the commission form."<sup>451</sup> But these individual commission charters differ from each other in many respects. "Nearly every type of commission organization to be found anywhere can be found in some of the commission governed cities of Oklahoma, and some variations that cannot be found elsewhere. Some of these cities provide for primary elections and some do not. In some, elections are partisan and in some non-partisan. The number of commissioners varies in the different cities from three to five."<sup>452</sup>

*Michigan.*—The new Constitution of Michigan, which went into effect in 1909, stipulates that "the legislature shall provide by general law for the incorporation of cities, and by general law for the incorporation of the villages," and that "under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charters, and through its regularly constituted authority, to pass all

laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of the state."<sup>453</sup> Although the foundation and principle of municipal home rule was established by the revised Constitution, legislation was required to prescribe the method by which cities should act and to establish limitations with regard to tax rates and indebtedness. Accordingly, an enabling act was passed by the legislature in 1909 to put the home rule provision of the Constitution into actual operation.

The law of 1909, as subsequently amended in 1911 and 1913,<sup>454</sup> authorizes the voters of the city to frame and adopt, as well as to amend, its charter, and to pass all laws relating to municipal affairs not contrary to the Constitution and general laws of the State. But charters adopted according to the provisions of this law must contain certain compulsory provisions, as well as features that are permissive and optional. Among these permissive features may be mentioned the initiative, referendum, and recall, the civil service system, and non-partisan primaries and elections. The compulsory provisions prescribed by the charter, however, do not by any means handicap or prevent the municipalities from adopting the commission, commission-manager, or any other new and improved form of government. Thus far thirteen cities in Michigan have taken advantage of the law and adopted home rule commission charters; but as a consequence of this home rule system, there is no uniformity in these charters.<sup>455</sup>

*Texas.*—Texas was the next State to incorporate the home rule charter system into the Constitution. The constitutional amendment adopted in 1911 established the home rule charter system by definitely allowing all cities having a population of five thousand or over to frame and adopt charters for their own government. In 1913 an enabling act<sup>456</sup> was passed by the legislature to put the constitutional provision into operation. The extent to which Texas cities have taken advantage of the opportunities afforded to them by this home rule legislation to regulate their local affairs is shown by the fact that thus far thirty-nine cities have either adopted new charters or amended their old ones.



Among the new charters a large majority provide for the commission form of government; while Galveston, Houston, and Dallas are among the cities which have made certain changes in their commission charters.<sup>467</sup> Thus, in Texas cities may adopt the commission form of government by any one of the following three methods: first, by the special charter system; second, under the general commission laws of 1909, 1913, and 1914; and third, under the home rule charter system. The combination of these three systems has placed Texas in the foremost position in this movement.

*Arizona.*—The home rule charter system was established in 1912 when Arizona was admitted as a State into the Union. In accordance with the Constitution,<sup>468</sup> all cities of thirty-five thousand inhabitants or over may enjoy the privilege of framing their own charters. But thus far only Phoenix has a home rule city-manager charter; while in Douglas there is found a home rule commission charter.<sup>469</sup>

*Ohio.*—By a constitutional amendment<sup>460</sup> adopted in 1912 Ohio entered the list of home rule States. Under the provisions of this amendment, which went into effect on January 1, 1913, a number of cities adopted the commission-manager plan, but only Lakewood chose to have a commission charter.<sup>461</sup>

*Nebraska.*—The last State to adopt the constitutional home rule charter system was Nebraska. Municipal home rule in Nebraska was provided for by an amendment to the Constitution in 1912.<sup>462</sup> Any city having a population of more than five thousand may frame its own charter through a charter convention. Thus far, however, no city in Nebraska has succeeded in adopting a home rule commission charter.

#### STATES WITH SPECIAL COMMISSION CHARTERS

*North Carolina.*—North Carolina accepted the "government by commission" idea in 1909, when a special charter providing that form was granted to High Point.<sup>463</sup> The number of commissioners provided in this statute, however, was unusually large—there being nine. But in 1915 this special charter plan

was amended and the number of commissioners reduced to five, elected annually. Neither in the original nor in the amended charter is there any provision made for the initiative, referendum, or recall.

Greensboro<sup>464</sup> and Wilmington<sup>465</sup> received special commission charters in 1911; Raleigh in 1913; and Asheville in 1915. All of these charters, except that of Wilmington, provide for a commission of three members, including the mayor. Wilmington has a council of six members. In all provision is made for the initiative, referendum, and recall, but the percentages required on the petitions to put these instruments into operation vary greatly from place to place.

*West Virginia.*—West Virginia in granting special commission charters to Huntington<sup>466</sup> and Bluefield<sup>467</sup> in 1909 added some new features to the commission form of government. In addition to the general commission of four members, the Huntington charter provides a citizens' board, which is composed of eight persons chosen by the voters from each of the four wards. This board has the "right to veto on any franchise or ordinance passed by the Board of Commissioners, and the right to hear charges against any commissioner. A majority vote of the Citizens' Board may veto an ordinance or franchise; a two-thirds vote removes a commissioner. The Citizens' Board has its president, its rules and keeps the usual records, the city clerk acting as secretary. This, it should be noted, is only a veto-and-recall board, not a second chamber with coordinate power."<sup>468</sup>

Bluefield secured a similar charter from the legislature in the same year. But in place of the citizens' board Bluefield has a council composed of four persons elected from each ward. This council has the power to veto any ordinance, franchise, or license by a majority vote of all the members elected; and also the right to make recommendations concerning any matter relating to the city government. The legislative and administrative functions of the city are vested in a body of four persons known as the "Board of Affairs", but the members of this board can be removed by a two-thirds vote of the council.

West Virginia increased its list of commission-governed cities in 1911 by granting to Parkersburg<sup>469</sup> a new charter modelled

more or less on that of Des Moines, and by granting charters to Fairmount and Grafton in 1913 and 1914, respectively. All these three charters contain features of the advanced type of commission charters, including nomination by petition, the non-partisan direct primary and election, a civil service provision, and the initiative, referendum, and recall.

*Maryland.*—As is the case in most of the southern States, cities in Maryland are chartered by special acts. In 1910 the city of Cumberland received a special charter establishing the commission form of government. The governing body is a council of five members, including the mayor, elected for terms of two years. Candidates are nominated at a primary election by petition of at least one hundred qualified voters, and are elected on a non-partisan ballot. The powers granted to the mayor and city council are very broad, as the charter expressly provides that they "shall have control and supervision over all the departments of the said city, and to that end shall have power to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of all the departments of said city, and whatever agencies may be created for the administration of its affairs."<sup>470</sup>

The mayor and council, by a majority vote, assign each of its members to take charge of one of the following departments: police and fire, streets and public property, water and electric light works, and finance and revenue. The mayor is not assigned to any particular department, but is given "general supervision over all the departments of the city government and may require at any time full and particular information from any commissioner as to the affairs of his department."<sup>471</sup> There is no provision in the charter for the initiative, referendum, and recall; but the initiative has been available since November, 1915, when a constitutional amendment providing for municipal and county initiative on petition of twenty percent of the voters was ratified. The example of Cumberland was followed by Ellicott City in 1914, when a special charter creating a government by three commissioners was enacted.<sup>472</sup>

*Maine.*—In 1908 a new charter, following somewhat the features of the Des Moines Plan, was prepared for the city of Portland by a convention composed of committees representing the city government, the board of trade, and four other local organizations. The proposed charter was then sent to the legislature for an enabling act to place it before the voters of Portland, but was killed in committee. In 1911 a similar charter was framed by a similar convention. Because of the failure of the previous charter to obtain favorable action as a special charter it was proposed that the legislature should enact it as an enabling act for cities throughout the State. But in spite of this arrangement it met with no better fate than its predecessor.

In the same session, however, the legislature of Maine did pass two special enabling acts. In accordance with one of these acts Waterville voted in the fall of 1911 upon the commission form of government, but failed to adopt it. Under the provisions of another act, Gardiner voted upon the same proposition and accepted it.

The new government of Gardiner is in the hands of a mayor and two aldermen, one to be elected each year for a three-year term after the initial election; and the administration of city affairs is divided and classified under three department heads. The initiative is made available at a general election on petition representing ten percent (not less than 100 voters) of the vote cast for mayor at the preceding election, but a twenty percent petition (not less than 250 voters) may call a special election. Both the referendum and the recall may be invoked by the presentation of a twenty-five percent petition. Thus far Gardiner is the only city in the State operating under the commission form of government.<sup>473</sup>

*Florida.*—At the legislative session of 1911 a number of special acts were passed granting new charters to cities or towns. Two of them provide for the commission form of government for the towns of Pass-a-Grille<sup>474</sup> and Green Cove Springs<sup>475</sup>. In both cases provision is made for a commission of three members elected at large. The Pass-a-Grille charter authorizes the commissioners to choose a mayor from among their own number, and

to confer upon him a veto power over ordinances adopted by the board. There is no initiative or referendum, but recall elections can be invoked on petition of a number of qualified electors equal to fifty percent of the total vote cast at the last preceding municipal election.

The Green Cove Springs charter provides for both the initiative and the referendum on petition of fifty percent of the qualified voters, and a recall election must be held in response to a forty percent petition. Referenda on bond issues and franchises are compulsory.

During the same session a new charter was passed granting to the city of Lakeland<sup>476</sup> the authority to adopt the commission form of government, providing the question was approved by a two-thirds vote of the council and ratified by a majority of the voters. Lakeland adopted a commission-manager charter in 1913.<sup>477</sup>

In 1913 special commission charters were granted to Orlando, Pensacola, St. Petersburg, West Palm Beach, and Orange Park; and Apalachicola received a charter in 1915.<sup>478</sup>

*Georgia.*—In 1911 new charters providing for the commission form of government were passed by the legislature for the cities of Cartersville and Marietta and referred to the voters of these cities at special elections. The former<sup>479</sup> is modelled on the Des Moines Plan, and provides for a mayor and two commissioners, the mayor being the head of one department, while the board assigns the members to the remaining departments. The board has power to appoint all the city officials, to create or alter city offices, and to determine their powers and duties. There is also provision for the initiative, referendum, and recall. The referendum is made available on petition of ten percent of the registered voters, and the initiative and recall on twenty-five percent petitions.

The Marietta charter<sup>480</sup> also makes provision for three commissioners, one to be elected every two years for a six-year term. There is no provision for the initiative and referendum. Rome obtained a commission charter in 1914. The initiative, referendum, and recall are made available on petitions of twenty-five percent of the registered voters.

*Nevada.*—One city in Nevada, namely Las Vegas, received in 1911 a special charter providing the commission form of government. This charter is still in force. It creates, as the governing body, the usual commission of five members, including the mayor. The commissioners are elected for four years, and each of them is assigned to a particular department of the city administration by the mayor. The recall is provided for in the charter and can be invoked on petition of twenty percent of the qualified electors. The initiative and referendum are provided for in the State Constitution since 1912 by an amendment made in that year.<sup>481</sup>

Aside from the above mentioned States where commission charters can not be secured in any other way than through the special enactments of the legislature, there are States where means other than the special charter system are provided to enable municipalities to adopt the commission plan, but where special commission charters are also to be found. As a rule, these special commission charters were granted before there was any general commission law or home rule charter system. Special commission charters in this group of States will therefore be discussed in their chronological order.

*Texas.*—After Galveston and Houston had obtained satisfactory results from the commission form of government there was a great impetus in favor of the adoption of this plan in other towns and cities of the State. In 1907 five Texas cities—Dallas, Fort Worth, El Paso, Denison, and Greenville—adopted the plan. These charters were significant because three of them, those of Fort Worth, Dallas, and Denison, added new features to the original Galveston or Houston plan. The Fort Worth charter,<sup>482</sup> granted on February 26th, contains provisions for the referendum and recall. In the charter of Dallas, secured on April 13th, there are separate articles dealing with the initiative and referendum on ordinances,<sup>483</sup> the recall of elective officers,<sup>484</sup> and very elaborate provisions regarding the granting and control of franchises.<sup>485</sup> This Dallas charter is especially important because it “most directly suggested the referendum and initiative”,<sup>486</sup> which were in the same year incorporated into the famous Des Moines plan.

Denison<sup>487</sup> secured in the same month a commission charter containing provisions for the recall as well as a limited referendum on franchises. Greenville,<sup>488</sup> with a population of a little over 8000, was the first small city trying the new experiment. In 1909 the legislature of Texas granted commission charters to five other cities—namely, Austin, the State capital, Waco, Palestine, Corpus Christi, and Marshall. But as all the charters granted up to the end of the first decade of this century are special charters, there are features peculiar to each of them. Instead of a uniform system, these charters allow the existence of conflicting and perplexing provisions in several cities. In view of the difficulties inherent in the special charter system the legislature, as has already been noticed, passed a general law on April 1, 1909, enabling cities of certain size to adopt this form of government by a referendum vote.

*Idaho*—Lewiston,<sup>489</sup> Idaho, has been operating under the commission plan since 1907, its special charter having been secured on March 13th. It provides for a council of seven members, including the mayor, elected through the process of double election for terms of seven years. Provisions are made for primary nomination by petition; for the initiative, referendum, recall; and for a civil service commission. The unique provision of this special charter is that officers who are heads of departments have the privilege of the floor at meetings of the council when matters concerning their department are under discussion.

*Massachusetts*.—Since 1908 the commission form of city government ceased to be a southern or western fad. The system of government by commission is no longer a new experiment confined to a few cities scattered throughout the southern and western States, but has become a well-defined movement from the influence of which even the conservative New England cities are not immune. The first eastern State affected by this movement was Massachusetts in 1908, when Haverhill<sup>490</sup> and Gloucester<sup>491</sup> received from the legislature charters containing features of the commission form. Both charters provide for a council of five members, including the mayor, and vest in this council all powers formerly exercised by the city council, mayor,

and various boards. In Haverhill members of the council are nominated at a non-partisan primary based on petitions signed by twenty-five voters and are to hold office for two years, with partial renewal annually. Each member of the council, except the mayor, is the head of a particular department to be designated by the council. The mayor exercises a general supervisory power, and is required to assume the duties of the heads of departments during their disability. The initiative is made available at general elections on petition of ten percent of the voters voting for mayor at the preceding election. Both the referendum and the recall are available on a twenty-five percent petition.

In Gloucester the mayor and councilmen are elected annually. Nominally they are chairmen of the committees, but actually they are heads of departments which are not designated in the charter, but are to be provided for by ordinance. The initiative and referendum may be invoked on petition of twenty-five percent of the votes cast for mayor at the preceding election. The referendum on franchises is compulsory. But there is no provision for the recall or for a civil service commission.

The results in these two cities which had discarded the old form of government were very convincing; and the example was soon followed by Taunton in 1909 and by Lynn in 1910. At the general election held on November 7, 1911, the commission plan was submitted in Cambridge, Chelsea, Lowell, Lawrence, and Pittsfield in accordance with special acts of the legislature; but it was only in Lowell and Lawrence that the new plan was adopted, while in all the other cities it was rejected.<sup>492</sup> Salem was added to the list of commission-governed cities on November 5, 1912, but Salem had the honor of being the first city to discard the new plan by adopting the council plan as provided in the optional charter law.

*Tennessee*—Memphis secured in 1907 a special charter or charter amendment providing for the commission form of government, but the measure was declared unconstitutional on technical grounds. As a result of an appeal to the legislature another act of the same nature was passed in 1909. But in order to avoid the possibility of the law getting into the courts



and again being declared unconstitutional, the four members of the legislative council whose terms did not expire until November, 1911, were made members of the board of commissioners. Consequently the mayor was the only officer elected in the first year of the commission government.

This charter<sup>493</sup> vested in the board of commissioners all the powers formerly exercised by the legislative council, the fire and police commissioners, and the board of public works, with certain additional powers conferred upon the municipal corporation. The mayor is made the head of the department of public affairs and health; and the other commissioners are each designated to be the head of one of the following departments: fire and police; streets, bridges, and sewers; accounts, finance, and revenue; and public utilities, grounds, and buildings. The civil service provision is similar to that found in the Iowa law. There is, however, no provision made for the initiative, referendum, or recall. The example of Memphis was followed by Etowah in the same year, and by Chattanooga, Knoxville, St. Elmo, and Lebanon in 1911. The Chattanooga charter grants the mayor a veto power and a vote on the question of sustaining his own veto. Bristol received a special commission charter in 1913, and La Follette in the following year. Murfreesboro and Jackson adopted the commission plan in 1915 under special acts. All these acts, being special in nature, vary greatly from one another.<sup>494</sup>

*New York.*—New York began to feel the impetus of the movement for commission government in 1908 when the people of Buffalo, under the authority of what is known as the public opinion ordinance, voted for a new and simplified charter. But the experience of the cities of New York in general and of Buffalo in particular show how difficult it is sometimes to secure efficient government by resorting to small governing bodies. In November, 1909, the Referendum League of Buffalo caused to be drafted a proposed charter which was submitted to the people, and favorably voted upon.<sup>495</sup>

In 1910 three special bills providing commission charters for Buffalo, Mt. Vernon, and Melzinga were introduced in the legislature. The first two received scanty courtesy, neither

being reported out of the committee. The Melzinga charter, though it passed the legislature, was vetoed by Governor Hughes because it was carelessly drawn.

Early in February, 1911, representatives of twenty-two cities met in Rochester and formed the Commission Government Association of New York State, the object of which was "to establish in the Municipalities of New York State a business form of government on the commission plan".<sup>196</sup> In the same year seven commission bills were introduced into the legislature; but in spite of the strenuous pleadings of citizens from all over the State, either individually or as delegates from clubs or associations, on behalf of these bills none of them succeeded in passing both houses.<sup>197</sup>

In the meantime, more and more interest was being manifested in the various cities which were attempting to secure the simplified form of government; and in the period from 1910 to 1912 the proposed charter bills were endorsed by the various civic and commercial organizations of different cities. It was due to this manifestation of popular interest in city government that Beacon succeeded in securing, in 1913, the first special commission charter ever enacted in the State.

At the legislative session of 1914 the charter bill for Buffalo was again introduced, and this time, thanks to the authorities of the various civic and commercial organizations, it passed the Senate unanimously and received only three dissenting votes in the Assembly. But this action was not final. The Constitution of New York requires the submission of local bills to the mayor of the city concerned as the representative of the city. Mayor Fuhrmann vetoed the bill on the grounds that it ought not to be submitted along with other matters at the regular election and that it contained certain flaws in its phrasing. When the bill was resubmitted to the legislature, however, it was passed by a large majority in both houses.<sup>198</sup> In the fall of 1914 it was adopted by the voters of the city.

Thus, after six years of unremitting effort Buffalo finally secured a commission charter and so became the largest city in the country to commit its legislative and administrative affairs to a single group of men, thus emphasizing the tendency toward concentration of power and responsibility which has been the

characteristic feature of all recent developments in American politics.

**STATES WITH NO COMMISSION LAW OR COMMISSION CHARTER CITIES**

From the above brief review of the commission government movement in this country it will be noted that in the short period of one decade (from 1907 to 1916, inclusive) with only six exceptions, all the States of the Union have been affected in one way or another. In all these States there are commission laws, either general or special, which have been taken advantage of in varying degrees by the cities. The six States which have up to the present writing kept out of this nationwide movement are the following: Connecticut, Delaware, Indiana, New Hampshire, Rhode Island, and Vermont. This number is certainly insignificant in comparison with the large number of States influenced by the movement—the numerical ratio is only one to six. Professor Munro's prediction made in 1907 that the system of "government by Commission" must be regarded as "the climax of a well-defined movement, from the influence of which hardly a single large city in the country is entirely exempt" was certainly fulfilled during the period under consideration.

But since the popularization of the city-manager plan by Dayton, the progress of commission government has practically come to a standstill. Indeed, the recent tendency has been for the city-manager plan to arrest the march of commission government in cities. At the same time, it should be noted in passing that there are many States in which the commission government is, for the time being at least, the only form of simplified government easily available to their respective cities; and for some time to come additional cities will, no doubt, still adopt that form. But wherever the citizens of a community are given the right to frame their own charters, as in the case of the twelve so-called home rule States, or are given the option between several forms of simplified government, as in the case of States with optional model charter laws, the city-manager plan has the place of undisputed leadership in popular favor.

Commission government as operated in Des Moines, in Galveston, and in over four hundred other cities has cleared away the confusion of power and responsibility that existed in the old council-and-mayor plan; and through the application of the short ballot principle and the newer forms of institutional democracy, has given to the cities a workable form of municipal democracy. It is only on the administrative side that commission government is weak and defective, and the city-manager plan seeks to supply the remedy. Indeed, the new plan has been defined as "an endeavor to retain the strength of the commission plan—the concentration of policy determining authority in a small non-partisan legislative body—and to add to it a permanent administrative force of trained executives."<sup>199</sup> The origin and development of the city-manager plan will be discussed in the next chapter.

## VI

### THE CITY-MANAGER PLAN

Just as the commission form of government made headway through the momentum given to it by the newer forms of institutional democracy, so the city-manager plan made its way into the arena of municipal reform as the result of the tendency towards an appreciation of the need of experts in the management of complicated city affairs. This system follows not only many of the principles of responsible parliamentary government, but also most of the methods of large business corporations. The latest plan in American city government,<sup>500</sup> as one writer has called it, provides in the first place "a single elective board (commission) representative, supervisory and legislative in function, the members giving only part time to municipal work and receiving nominal salaries or none."<sup>501</sup>

In the same way as the directors of a business corporation employ a president, and just as the members of the majority party in Parliament choose a party leader to be the prospective prime minister, the board or commission employs a manager, known as the city-manager, who holds his office at the pleasure of the board. The city-manager is the sole agent of the council through whom that body acts; and he is responsible to it for the entire administration of the city. Thus, administrative responsibility is secured, in the first place, through the responsibility imposed upon the manager, appointed and removable by the council. Members of the council, in turn, are responsible to the electorate and may be removed by the process of the recall.

The city-manager may not be a specialist in any particular department of the city administration, but he must be an expert in city management. Not every city has expert managers among its own residents. Indeed, some of the smaller towns have no men qualified to perform the tasks assigned to the city-manager. In such a case, if the choice is limited to local residents, the manager will generally be appointed for rea-

sons other than skill in administration. To avoid such a situation it is now the practice of most of the city-manager governed cities to adopt the German method of advertising for a manager, who may come from any part of the country.<sup>503</sup>

The majority report of the National Municipal League's committee on the commission form of government declared that "the city manager feature is a valuable addition to the commission plan"; and the advantages of the new plan as enumerated in the same report are so comprehensive and so well worked out that an extensive quotation from the report is here inserted.<sup>504</sup>

1. It creates a single-headed administrative establishment instead of the five separate administrative establishments seen in the Des Moines plan. The administrative unity makes for harmony between municipal departments since all are subject to a common head.

2. The city manager plan permits expertness in administration at the point where it is most valuable, namely, at the head.

3. It permits comparative permanence in the office of the chief executive, whereas in all plans involving elective executives, long tenures are rare.

- a. This permanence tends to rid us of amateur and transient executives and to substitute experienced experts.

- b. This permanence gives to the administrative establishment the superior stability and continuity of personnel and policies which is a necessary precedent to solid and enduring administrative reforms.

- c. This permanence makes more feasible the consideration and carrying out of far-sighted projects extending over long terms of years.

- d. This permanence makes it worth while for the executives to educate themselves seriously in municipal affairs, in the assurance that such education will be useful over a long period and in more than one city.

4. The city manager plan permits the chief executive to migrate from city to city, inasmuch as the city manager is not to be necessarily a resident of the city at the time of his appointment, and thus an experienced man can be summoned at advanced salary from a similar post in another city.

- a. This exchangeability opens up a splendid new profession, that of "city managership."

- b. This exchangeability provides an ideal vehicle for the interchange of experience among the cities.

5. The city manager plan, while giving a single-headed administration, abolished the one-man power seen in the old mayor-and-council plan. The manager has no independence and the city need not suffer from his personal whims or prejudices since he is subject to instant correction, or even discharge, by the commission . . . .

a. This abolition of one-man power makes safer the free-handed extension of municipal powers and operations unhampered by checks and balances and red tape.

b. More discretion can be left to administrative officers to establish rulings as they go along, since they are subject to continuous control and the ultimate appeal of dissatisfied citizens is to the fairness and intelligence of a group (the commission) rather than to a single and possibly opinionated man (an elective mayor). Inversely, laws and ordinances can be simpler, thus reducing the field of legal interpretation and bringing municipal business nearer to the simplicity, flexibility and straightforwardness of private business.

6. The city manager plan abandons all attempts to choose administrators by popular election. This is desirable because:

a. It is as difficult for the people to gauge executive and administrative ability in candidates as to estimate the professional worth of engineers or attorneys . . . .

b. By removing all requirements of technical or administrative ability in elective officers, it broadens the field of popular choice and leaves the people free to follow their instinct which is to choose candidates primarily with reference to their representative character only. Laboring men, for instance, can then freely elect their own men to the commission, and there is no requirement (as in the Des Moines charter) that these representatives shall, despite their inexperience in managing large affairs be given the active personal management of a more or less technical municipal department.

7. The city manager plan leaves the line of responsibility unmistakably clear, avoiding the confusion in the Des Moines plan between the responsibility of the individual commissioners and that of the commission as a whole.

8. It provides basis for better discipline and harmony, inasmuch as the city manager cannot safely be at odds with the commission, as can the Des Moines commissioners, in their capacity as department heads, or the mayor with the council in the mayor-and-council plan.

9. It is better adapted for large cities, than the Des Moines plan. Large cities should have more than five members in their commission to avoid overloading the members with work and responsibility, and to avoid conferring too much legislative power per individual member. Unlike the Des Moines plan, the city manager plan permits such enlarged commissions, and so opens the way to the broader and more diversified representation which large cities need.

10. In very small cities, by providing the services of one well-paid manager instead of five or three paid commissioners, it makes possible economy in salaries and overhead expenses.

11. It permits ward elections or proportional representation as the Des Moines plan does not. One or the other of these is likely to prove desirable in very large cities to preserve a district size that will not be so

big that the cost and difficulty of effective canvassing will balk independent candidates, thereby giving a monopoly of hopeful nominations to permanent political machines.

12. It creates position (membership in the commission) which should be attractive to first class citizens, since the service offers opportunities for high usefulness without interruption of their private careers.

The report of the committee of the National Municipal League gave Sumter, South Carolina, the credit for originating the city-manager plan, because it was Sumter which made the first attempt to combine the commission form and the city-manager. But like many other chance creations of politics, it turns out that the originators of the Sumter plan have built upon a solid basis of experiences which had been thoroughly worked out in other jurisdictions, both foreign and domestic. The city-manager plan has its progenitors which can hardly be excluded from a consideration of the history of the movement.

It has been claimed by writers on municipal government that the German Burgomeister and the English Town Clerk are the forerunners of the American city-manager. But according to Mr. Toulmin, "the idea abroad was only partially formulated before it was fully developed in this country, and, in fact still remains but partially formulated there. All credit for so radical an achievement belongs to the American people who actually created it."<sup>504</sup> The solution of the difficult problem of the extent to which the German Burgomeister or the English Town Clerk has influenced the development of the American city-manager need not be discussed in this connection. But it is necessary for the purpose of the examination here undertaken to set forth and discuss the preliminary plans that have led to the fully developed commission-manager plan as the term is now understood.

#### THE NEW MEXICO PLAN

The first attempt to create a municipal officer resembling the present city-manager was made by the Territorial legislature of New Mexico in 1909, when the so-called "supervisor plan" was written into the statute books. The New Mexico law of 1909, which was in force until the passage of the present



commission law in 1913, provided a council of three members as the governing body of the city. This city council was authorized to employ a "superintendent of city affairs", whose duty it was "to take charge of all public matters of the city, under the direction of the mayor and the city council; to direct all street improvement, care for and repair all streets and all public improvements, and to direct the use, extension, repair, maintenance of all public utilities; to see that the city is kept in proper sanitary condition and safe for life and property." The law provided further that "it shall be his duty to submit to the mayor and the city council at the regular meeting of the city council, held in the month of March of each year, a detailed estimate as near as is practicable, of the expenses of maintaining streets, alleys, public grounds, of keeping a proper sanitary condition, and the estimate and expense of any improvement which may be necessary and contemplated by said superintendent, and mayor and city council, and he shall make such recommendations to said mayor and city council, as may seem to the best interest of the city, and he shall at all times, when necessary, consult the mayor and city council upon all matters pertaining to the city's welfare and the comfort and convenience of the people thereof."<sup>505</sup>

The superintendent was required to devote his entire attention and time to the affairs of the city and was prohibited by the law from being engaged in any other work or occupation. His compensation was determined by the mayor and the city council and fixed by resolution, but it might not be increased or diminished after two years or during the period of his employment without his consent.

The city of Roswell was organized under this supervisor plan and its affairs were so conducted until the repeal of the act in 1913. By the terms of this repeal Roswell, however, was permitted to continue the plan until the next regular election in 1914, when the city had the option of adopting the commission law of 1913.<sup>506</sup> In 1914 Roswell, instead of coming under the commission law of 1913, created the position of city-manager under an ordinance of the city council. The city-manager, appointed by the mayor with the consent of the city council, is the ad-

ministrative head of the city government. His powers and duties are subject to the approval, supervision, and control of the mayor and city council, and his salary is fixed by ordinance or resolution of the city council.<sup>507</sup>

#### THE STAUNTON PLAN

Inspired by the success of commission government in Galveston and Houston, the city of Staunton, Virginia, appointed, in 1907, a special committee to investigate and report upon "the expediency of creating a more efficient and economical administration of the city's affairs."<sup>508</sup> But the investigation had not proceeded very far when it was discovered that a barrier stood in the way. The State of Virginia prescribes the form of city government for all its municipalities by rigid and mandatory provisions in the Constitution, which provide, among other things, that "in every city there shall be elected by the qualified voters thereof . . . a mayor, for a term of four years, who shall be the chief executive officer of the city", and that in every city of the first class "there shall be . . . a council, composed of two branches having a different number of members."<sup>509</sup> According to statutory provision, any city having a population of ten thousand or more is a city of the first class. Staunton having more than 12,000 inhabitants is therefore a city of the first class. Such being the case, Staunton could not legally abolish the office of mayor and council and substitute therefor a board of commissioners. There was no way to overcome this legal limitation, except by amending the Constitution; but such procedure was not considered feasible—at least for the time being. The difficulty, though an obstacle for Staunton, served as a means of creating an innovation in American municipal government.<sup>510</sup>

In section 1038 of the Virginia Code there is a provision which permits the city council to establish such officers as may be necessary to properly conduct the city's affairs. Taking advantage of this provision, the idea of a general manager was conceived, and an ordinance creating such an office was accordingly passed on January 13, 1908.<sup>511</sup> Thus Staunton created the posi-

tion of general manager without changing its form of government in other respects.

The ordinance of January 13th authorized the two branches of the council to meet in joint session for the first time and thereafter annually at the regular election of city officers in July of each year to appoint an officer known as the "General Manager", who is required to devote his entire time to the duties of his office, and to "have entire charge and control of all the executive work of the city in its various departments, and have entire charge and control of the heads of departments and employees of the city." Other duties of the general manager are to "make all contracts for labor and supplies and in general perform all the administrative and executive work now performed by the several standing committees of the Council, except the Finance, Ordinance, School and Auditing Committees." Furthermore, he is required to "discharge other duties as may from time to time be required of him by the Council." These additional duties, so far as required by the council, consist of being a "financial adviser of the council, a court to hear complaints of citizens, and supervisor of the superintendents of highways, parks, lights, water and corrections."<sup>11</sup>

The general manager, before entering upon the duties of his office, is required to "execute a bond before the Clerk of the Council in the penalty of \$5,000.00 with good and sufficient surety, conditioned for the faithful performance of the duties of his office." He is paid an annual salary which is fixed by the council at \$2500.

The general manager is required to report to the city council at the beginning of each fiscal year the needs of all the city departments, together with his recommendations and detailed estimates. Thus, an intelligent budget system is made possible and misappropriations and discrepancies between the estimated revenues and expenditures so frequent under the old system may be avoided. Again, he is required to report at the close of each year to the council all the work done and every cent spent during the year. Monthly balances must be rendered to the council both by the manager and the treasurer; and these two must agree, the one operating as a check on the other. In the office

of the general manager there is kept a systematic account of every transaction, and also a regular set of double entry books serving as a check on the office of city treasurer. All these books are open to public inspection at any time. It has been well said that the office of general manager is "really a bureau of information for the City Council, and departments and the public."<sup>513</sup>

In the words of John Crosby, president of the common council of Staunton, Virginia, the Staunton plan is "a democratic government 'for the people and by the people'. Neither the people nor the council have surrendered any of their sovereign rights; they have simply created an office known as that of a general manager, a paid employee, who devotes his whole time and attention to the business of the city and who is responsible to the council and the people, instead of intrusting the affairs of the city to the Committees of the Council."<sup>514</sup>

#### THE LOCKPORT PROPOSAL

After Staunton made the first move toward introducing the managership into city government, an attempt to combine the features of commission government with the city-manager idea was first made in 1911, when the board of trade of Lockport presented to the New York legislature a plan of city government subsequently known as the "Lockport Plan".

In the fall of 1910 the city of Lockport, being conscious of the unsatisfactory manner in which its municipal affairs had been run under the old and complicated mayor and council plan of government, appointed a charter revision committee in the hope that a better framework of government might be devised. But when it was known that this committee was "to do nothing but trim the edges of the old charter, the local board of trade began to agitate for commission government, and produced a bill applicable to any third class city in the State, Lockport included, for an improved government plan."<sup>515</sup>

The form of government set forth in this measure is built upon the fundamental features of the best existing commission government statutes and charters, that is, the unification of all local powers of government in the hands of a single elective body,

and the short ballot. It also aims to correct the inherent defects in the ordinary commission form of government from an administrative point of view.

Under this proposal<sup>116</sup> the legislative and general regulative powers of the city are vested in a city council, composed of five aldermen elected at large for four years, and subject to recall after six months on a twenty-five percent petition. The candidate receiving the highest number of votes is *ipso facto* the mayor of the city, who possesses certain special powers and duties conferred upon him by the charter or the city council. Just as in ordinary commission-governed cities, the mayor in the Lockport proposal is to be the president and presiding officer of the city council, and like the mayor of most of the commission-governed cities, he has no veto power. Thus far, the proposed measure is similar to the commission plan; but here the similarity ends.

The radical departure of this proposal from the orthodox commission form is on the administrative and executive side, and this departure is made by the creation of the office of city-manager. This officer is chosen by the city council to be the administrative head of the city government for an indefinite term. The city-manager is required (1) "to see that within the city the laws of this state and the ordinances, resolutions and by-laws of the city council shall be faithfully executed"; (2) "to attend all meetings of, and to recommend to, the city council, from time to time, such measures as he shall deem necessary or expedient for it to adopt"; (3) to present, "at such times as the city council shall so require", reports from the several departments, and to "draw up an annual report which shall consolidate the special reports of several departments"; (4) to be a member of the board of estimate and apportionment and to "present, to that body, annually, an itemized estimate of the financial needs of the several departments for the ensuing year"; (5) to "appoint persons to fill offices for which no other mode of appointment is provided"; (6) to "transmit to the heads of the several departments written notice of all acts of the city council relating to the duties of their departments", and to "make designations of officers to perform duties ordered to be performed by the city

council"; and finally (7) to "exercise all other powers and perform all other duties conferred and imposed upon mayors of cities, unless other designation shall be made by this act or by act of the city council."<sup>517</sup>

According to this proposal, therefore, the commission or council is but a policy-determining body, while the policy-executing functions are entrusted to the city-manager. In other words, the plan provides that "the commission shall execute its policies through a hired administrator, leaves to the commissioners simply the function of telling their city manager what the people want, and seeing to it that he carries out their orders in the spirit in which they are issued."<sup>518</sup>

Aside from the main feature of the proposal noted above, several interesting minor features may be mentioned in passing. These are the usual minor features of commission government charters or statutes, including the non-partisan election, the abolition of the ward, and the initiative, referendum, and recall. An interesting feature of the election provision is the incorporation of the Canadian system of nomination by deposit. Nomination may be made by petition, but in lieu of this, "a deposit of fifty dollars in legal tender may be made by any candidate for the office of alderman and his name shall be entered upon the official ballot in all respects as if a petition had been filed and accepted." This deposit, however, may be refunded if the candidate receives fifteen percent or more of the total votes cast.

The "Lockport Bill", introduced in the New York legislature of 1911, never became a law. It was due to the unfortunate political conditions in New York State that the city of Lockport, much to the disappointment of the friends of good government, never came under the operation of such a charter.<sup>519</sup> But at the same time it should not be overlooked that the Lockport proposal, though it failed to be written into the statute books of New York State, has aroused much comment and interest throughout the country; and the cities which have since adopted the city-manager plan have practically without exception copied the Lockport proposal verbatim.

## THE SUMTER PLAN

The Lockport proposal, though it excited much discussion, never came to fruition; and so it was left for the southern city of Sumter, South Carolina, to be the first city in this country to combine the features of commission government with the city-manager idea. The new form of government thus evolved is commonly known as the commission-manager plan, suggesting the idea of a continual development from the commission form of government.

In 1912 the South Carolina legislature passed the so-called "Columbia Bill", embodying the general features of the Des Moines plan, to which reference has already been made in an early chapter. In this law there is a special provision for the government of Sumter which reads as follows:

If a majority of the ballots cast at the election provided for herein shall be in favor of having a manager (city manager), then, in that event, the mayor and councilmen when elected shall not distribute the powers of said council among the members of the same; but shall employ a male person of sound discretion and of good moral character not of their number of such salary and upon such terms as they may decide, who shall be subject to such rules and regulations as may be provided by said councilmen.<sup>550</sup>

As indicated in the above quotation, the new form of government was not forced by the legislature on the city of Sumter. On the contrary, it was entirely optional with the people of the city to adopt either the straight commission form, as provided in the State law, or the city-manager plan. On June 12, 1912, a special election was held, and the new city-manager plan which carried out the essentials of the Lockport proposal was adopted by a vote of two to one.<sup>551</sup>

In August of the same year the first election took place. Inasmuch as the new plan removes the burden of administrative details from the members of the elective board, it provides more chances for business men of ability to assume the responsibility of municipal management without at the same time giving up their private interests. The commission of three members which was elected was said to be "composed of the strongest and ablest of men that could be brought together"; one of them was a former mayor and the chief advocate of the new system; another

was a banker; and the third was a prominent merchant.<sup>533</sup> The three men who make up the commission, one of them bearing the title of mayor, are not attracted by the salary of the office, which is only \$300 for the mayor and \$200 for the councilmen; nor are they expected to give any considerable time to their public duties. Indeed, they are frankly not experts. Their only function is to represent the interests of the city as a board of directors and to delegate the responsibility for detail work to a competent executive known as the city-manager, who is their servant and holds his office at their pleasure. To this officer the councilmen entrust the appointment, subject to civil service rules, of all the other city officers and employees; and to him they look for reports of the city's needs and the formulation of the city's budget.<sup>534</sup>

The first task of this newly-elected council was the selection of a competent and trained man as the first city-manager of Sumter; and in performing its duty, the council advertised throughout the country for a general business manager, just as a private business concern usually does under the same circumstances. Such a practice, though not uncommon in Germany, was certainly a unique spectacle in this country. Indeed, the council had caught the spirit of the new plan.<sup>535</sup>

As the proclamation of the Sumter Council issued on October 14, 1912, was the first advertisement of this kind ever published in this country, it may be quoted in full:

October 14, 1912.

The city of Sumter hereby announces that applications will be received from now till December the first for the office of City Manager of Sumter.

This is a rapidly growing manufacturing city of 10,000 population, and the applicant should be competent to oversee public works, such as paving, lighting, water supply, etc.

An engineer of standing and ability would be preferred.

State salary desired and previous experience in municipal work.

The City Manager will hold office as long as he gives satisfaction to the commission. He will have complete administrative control of the city, subject to the approval of the board of three elected commissioners.

There will be no politics in the job; the work will be purely that of an expert.

Local citizenship is not necessary, although a knowledge of local conditions and traditions will of course be taken into consideration.



A splendid opportunity for the right man to make a record in a new and coming profession, as this is the first time that a permanent charter position of this sort has been created in the United States.

At the request of the City Commissioners these applications will be filed with the Chamber of Commerce of Sumter, A. V. Snell, Secretary.<sup>555</sup>

This proclamation attracted nation-wide attention. Almost all the leading newspapers of the country and municipal and engineering journals of any importance published the news and the advertisement. In response, nearly one hundred and fifty applications appeared—a majority of them being from civil engineers with experience in municipal work. After an investigation of the records of various applicants, the council chose Mr. M. M. Worthington, a non-resident civil engineer, and duly appointed him to the position of the first city-manager of Sumter in January, 1913. His salary was fixed at \$2400 per annum. Mr. Worthington held his position for nine months and was succeeded by Major Robertson at \$3300 a year. But the second manager resigned after only a few months' service (November 1, 1914).<sup>556</sup> Since then the position of city-manager in Sumter has not been filled.

The causes of the unsatisfactory results in Sumter have been well stated and set forth in the June, 1915, number of *The American City*, under the heading "How the City Manager plan was handicapped: Three comments on the unsatisfactory experience of Sumter, S. C., with the commission manager plan under a defective charter."<sup>557</sup> These three comments, though written from different viewpoints and by different persons—a local observer, a charter expert, and Sumter's last city manager—came to the same conclusion that the unsatisfactory experience was not the result of the defects of the plan itself, but was due to the peculiar local conditions existing in Sumter. Mr. Robertson, Sumter's last city-manager, formulated in this connection two principles essential to the success of the city-manager plan, which were absent in the Sumter plan. "First, the responsibilities and duties and authority of the city manager should be clearly set forth; Second, it should be a misdemeanor (or possibly a felony would be more effective) for a commissioner or councilman, except in official session, to interfere in any way with or assume in any way the authority of the City Manager."

These two principles are certainly very fundamental to the success of the city-manager plan, and cities failing to observe them will inevitably be disappointed in the working of the plan.

THE CITY-MANAGER PLAN IN HICKORY AND MORGANTON,  
NORTH CAROLINA

Not long before Sumter came under the new plan of government the citizens of a little town of 3716 inhabitants in the neighboring State, namely, Hickory, North Carolina, became interested in a new charter. They took up the Lockport proposal, and utilized it. The new charter<sup>528</sup> adopted on March 17, 1913, followed very closely the model charter except that the members of the council, instead of being elected at large, were chosen by wards, and that the city-manager is charged with certain specific engineering duties, including "authority and charge over all public works, the erection of buildings for the city, the making and construction of all improvements, paving, curbing, sidewalks, streets, bridges, viaducts, and the repair thereof".

Furthermore, the city-manager in Hickory is authorized to "approve all estimates of the cost of public works, and recommend to the city council the acceptance or rejection of the work done or improvements made; he shall have control, management and direction of all public grounds, bridges, viaducts and public buildings; he shall have control of the location of the street car tracks, telephone, telegraph poles and wire; he shall have charge of the water sheds from which the city takes its supply of water, pumping stations, pipe lines, filtering apparatus, and all other things connected or incident to the proper supply of water for the city; and shall secure all rights of way and easements connected with the water works or sewerage systems, or the extension of the streets". The first appointee to the position of city-manager was Mr. Marvin Sherrill of Louisville, Kentucky.<sup>529</sup>

The neighboring city of Morganton observed with great interest the formulation and adoption of the city-manager charter at Hickory. In fact, the people of Morganton liked the Hickory charter so well that they, after making a few changes in it, took it to the State capital and secured its enactment as their own

charter. But instead of being called "city manager", the new officer in Morganton was created with the title of "Town Manager". This title is probably more suitable to Morganton, which has only 2712 inhabitants. The government of the city is vested in a mayor and two aldermen, comprising the city council, by whom the town manager is appointed. His term of office is at the pleasure of the council. The plan became operative in May, 1913; and the new position created was immediately filled on May 10th.<sup>530</sup>

#### THE CITY-MANAGER PLAN IN DAYTON, OHIO

Reference has already been made to the home rule amendment made to the Constitution of Ohio in 1912 by which Ohio cities were emancipated from legislative domination and given the right to frame and adopt their own charters. Immediately after this amendment went into effect on January 1, 1913, scores of Ohio cities began to avail themselves of the privileges thus granted; and among them was Dayton. At the very beginning of the charter campaign in Dayton public-spirited citizens and numerous civic organizations, including the Chamber of Commerce, the Bureau of Municipal Research, and a variety of others, insisted on the introduction of the city-manager plan. When the campaign was under way there came the disastrous flood of March 25th.<sup>531</sup>

It is a curious fact that twice has a flood disaster brought about an important departure in American municipal government. Just as the flood of 1900 resulted in giving Galveston the famous commission government, so Dayton received a new type of government as a result of the flood of 1913. This coincidence arouses historical curiosity in the fact that at the time of a great disaster, like the flood, when the governmental mechanism has completely broken down, the only thing that can save the situation is to put the management of the city's affairs in the hands of a small committee which is able to act quickly and effectively. This was what was actually done both in Galveston and in Dayton. The practical demonstration of the operation of a simplified governmental form given to the people at such a critical time served not only as a powerful incentive to discard time-honored

and unworkable political concepts and theories, but also as a means of bringing out and of introducing new methods and new ideas of government which conform to modern conditions.

It is true that had there been no flood, Dayton might still have adopted the city-manager plan; but it is also true that the great flood emphasized the faults of the old system and taught the need of an effective and efficient government, and that the enthusiasm and interest of the citizens of Dayton might never have been stirred up to such a degree as was shown in the campaign, if the old government had not completely broken down. As it was, the result on May 20th, when Dayton decided by a vote of 11,542 to 2020 to have a charter convention, was the election of every one of the fifteen candidates on the commission-manager ticket.<sup>533</sup>

After the election the charter board worked diligently on the charter, and submitted their finished work to the people in July. On August 12th an election was held, and the result was the adoption of the new charter by a vote of 13,217 to 6042.<sup>533</sup>

The adoption of the new plan by so important a city as Dayton, having a population of over 115,000, gave the greatest publicity to the city-manager plan. Hitherto, this innovation in American municipal government had made only a slight impression upon the public mind; and it is to the Ohio cities, especially to Dayton, that must be attributed the credit of bringing the plan into the realm of practical possibility and of popularizing it throughout the country. Dayton is to the city-manager plan what Des Moines has been to the commission plan.

In analyzing the Dayton charter it should be constantly kept in mind that it was the deliberate intention of the framers of the Dayton plan to retain the strength of the commission plan and at the same time add to it a permanent administrative force of trained executives. Such an endeavor is well indicated in the statement of the charter commission issued to the voters when the proposed charter was submitted. Part of the statement is as follows:

We have taken a step in advance of the Commission governed cities and provided a remedy for the generally acknowledged defect of such forms. We have provided a chief administrative officer named 'The City Manager', whose duty it shall be to supervise and control the conduct and operations

of all officers and employees of the city and to manage the affairs of the city in an efficient and economical manner. We are convinced this centralization of administrative authority will produce business-like methods in city government and fix responsibility for official action that will result in great benefit.

In these words of the charter commission may be found the keynote of the new charter, which is an attempt to secure democracy and efficiency at the same time—the most difficult problem of present-day politics. This combination was effected in Dayton by a complete separation of the legislative from the administrative functions of government and by the subordination of the administrative officers to the legislative authority. In other words, the functions of the representatives of the people are strictly limited to the determination of what shall be the general policies of the government, while the execution of the policies thus determined is delegated to the so-called “controlled executive”, an appointed officer held definitely responsible.

The policy-determining functions of the city's government are entrusted to a commission of five members, elected at large on a non-partisan ticket for a term of four years. Nomination is made by a primary election, and the name of any elector of the city may be put on the primary ballot on petition of “at least two percent of the total number of registered voters in the municipality.”<sup>534</sup> This board of commissioners is to be a continuous body, since the terms of three and two of them expire alternately every two years.

The mayor is not separately elected as such, but the commissioner who receives the highest vote at the election at which three commissioners are chosen is *ipso facto* the mayor of the city. His duties are to preside over the meetings of the commission and to represent the city as one of the members of the county budget commission for the fixing of the tax rate. He is “recognized as the official head of the city by the courts for the purpose of serving civil processes, by the Governor for the purposes of the military law, and for all ceremonial purposes.”<sup>535</sup>

Each commissioner receives an annual salary of \$1200 and the mayor has an additional sum of \$600. A deduction of one percent of the annual salary is to be made for each absence of a commissioner from a regular meeting, and five consecutive

absences may operate to vacate the seat. The commission is required to meet not less than once a week. But the duties of the commissioners are by no means burdensome: They may be briefly summarized under two headings: (1) the appointment of a city-manager, a city clerk, several members of a county board, and a civil service board; and (2) the enactment of various kinds of ordinances, like appropriation ordinances, police ordinances, and ordinances determining upon public works to be paid for by special assessments.<sup>536</sup>

The officer taking charge of the entire detailed administrative work is the city-manager, who is defined in the charter as "the administrative head of the municipal government", and is held "responsible for the efficient administration of all departments". The appointment of the city-manager made "without regard to his political beliefs", and he himself "may or may not be a resident of the city of Dayton when appointed."<sup>537</sup> The city-manager holds his office at the will of the commission and is also subject to popular recall. Charter experts do not agree on the advisability of the last mentioned provision. It was said that "the very first step in the direction of expert city administration was to take the choice of the experts out of the hands of the electorate and to put it into the hands of some other organ, the council or the mayor, as the case may be . . . . If it is characteristic of the city manager plan to make the commission or council responsible for choosing the best man for the place, what possible justification can there be for making that same man subject to recall by the electorate?"<sup>538</sup>

The duties and powers of the city-manager are very extensive, and as enumerated in the charter, they are as follows:

To see that the laws and ordinances are enforced;

To appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified services; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this charter;

To exercise control over all departments and divisions created herein or that may be hereafter created by the Commission;

To attend all meetings of the Commission with the right to take part in the discussion but having no vote;

To recommend to the Commission for adoption such measures as he may deem necessary or expedient;

To keep the Commission fully advised as to the financial condition and needs of the city; and

To perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the Commission.<sup>20</sup>

Thus, the city-manager exercises all the functions of municipal government except those which are political or policy-determining in nature. Under him there are, for administrative purposes, five operating departments. At the head of each department there is a director, chosen by the city-manager for an indefinite term and responsible to him and the commission "for the conduct of the officers and employes of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control."<sup>21</sup> These directors are:

1. The "Director of Law", who is the city attorney.
2. The "Director of Public Service", who has "charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and water courses"; of the collection of garbage and ashes; and the general supervision of all public utilities.
3. The "Director of Public Safety", who is the executive head of the divisions of police and fire, and also the chief administrative authority in all matters affecting building inspection and regulation, and the enforcement of ordinances relating to weights and measures.
4. The "Director of Finance", who has under him the city accountant, the city treasurer, and the city purchasing agent.
5. The "Director of Public Welfare", who has charge of "all charitable, correctionable, and reformatory institutions and agencies belonging to the city; the use of all recreational facilities of the city including parks and playgrounds"; and who has also under him the health officer of the city.

This division of government for administrative purposes into five departments, so common in the commission-governed cities, is, however, by no means to be considered as final in Dayton. In fact, a reservation is specifically made in the charter by which

the commission "may by ordinance discontinue any department and determine, combine, and distribute the functions and duties of departments and subdivisions thereof."<sup>542</sup>

An interesting provision in the Dayton charter, not ordinarily found in American charters, is the section which provides for the appointment of a "City Plan Board" by the commission, and, upon the request of the city-manager, for the appointment of citizen boards to act in an advisory capacity with various department heads.

Oftentimes claims have been made that the commission form of city government is modelled upon the organization of large business corporations. But even a superficial examination of the Des Moines charter and other charters modelled after it will reveal the obvious fact that both Des Moines and other commission-governed cities have failed to install modern scientific methods of managing business, which are indispensable in the operation of commercial organizations. The framers of the Des Moines plan, in their endeavor to model the city government on the plan of private business organization, unfortunately overlooked or minimized the importance of the characteristic features of modern business management.

As a matter of fact, provisions like scientific budget-making, accounting procedure, the purchasing of supplies, service and operating cost, the standardization of duties and compensation, are of far more importance to the successful operation of various phases of municipal administration than is the bare framework of a simplified government machinery. The almost universal failure of the commission-governed cities to install scientific methods of business management may partly account for the mediocre administrative accomplishments under this form of government, and for the recent decline of enthusiasm for that plan. On the other hand, a few cities operating under the mayor-and-council plan of government have by the adoption of these improved methods of business management succeeded in increasing the efficiency and economy of their administration, and have been recognized as being more efficiently governed than are some cities with commission government charters.



Realizing the failure of the Des Moines plan to carry out consistently the application of modern scientific business methods to city government and its failure to recognize the importance of business methods in municipal administration, the framers of the Dayton charter introduced in that instrument numerous detailed provisions for the operation of the administrative departments and for the guidance of the administrative officers. These features, which are usually absent in the ordinary commission charters, include provisions governing the budget-making, accounting procedure, the purchasing agent, public improvements, and the like. Space forbids a detailed analysis and discussion of these important features, but a brief summary of the financial system may illustrate the up-to-date method installed in Dayton.

The fiscal year of the city is coincident with the calendar year. The procedure provided in the charter for the appropriation of funds may be briefly summarized as follows: the city-manager is required to submit to the commission not later than November 1st of each year "an estimate of the expenditures and revenues of the city departments for the ensuing year", to be compiled from detailed information obtained from the several departments. The classification of the estimates of expenditures must as nearly as possible correspond to the main functional divisions of all departments; and the following information must be presented in parallel columns:

A detailed estimate of the expense of conducting each department as submitted by the department.

Expenditures for corresponding items for the last two fiscal years.

Expenditures for corresponding items for the current fiscal year, including adjustments due to transfers between appropriations plus an estimate of expenditure necessary to complete the current fiscal year.

Amount of supplies and materials on hand at the date of the preparation of the invoice.

Increase or decrease of requests compared with the corresponding appropriations for the current year.

Such other information as is required by the Commission or that the City Manager may deem advisable to submit.

The recommendation of the City Manager as to the amounts to be appropriated with reasons thereof in such detail as the Commission may direct."

Copies of the estimates, when prepared and submitted, must be on file in the office of the commission for public inspection and

examination; and provision is made for public hearings and for the publication of the tentative appropriation ordinance before its final passage.

In order to provide adequate regulation of accounting procedure, the framers of the Dayton charter borrowed two sections from the Cleveland charter. One of these sections reads as follows: "Accounting procedure shall be devised and maintained for the city adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of value, including cash receipts and disbursements".<sup>543</sup> The other borrowed section, which is simply a corollary of the above clause, requires the commission to make a continuous audit of "the books of accounts, records, and transactions of the administrative departments of the city. Such audit . . . shall be made by one or more certified public accountants . . . [whose duties] shall include the certification of all statements . . . [including] a general balance sheet, exhibiting the assets and liabilities of the city, supported by departmental schedules, and schedules for each utility publicly owned and operated; summaries of income and expenditure, supported by detailed schedules; and also comparisons, in proper classifications, with the last previous year."<sup>544</sup>

Supplementing these charter provisions for financial control, ordinances have been passed making further detailed provisions for departmental procedure, such as the installation of ledgers and records, the method of central control of operating reports, unit cost records, and the like.<sup>545</sup> In short, a detailed and most up-to-date municipal accounting system has been installed in Dayton. Closely connected with the financial accounting system are the provisions by which the "heads of each department or office shall require proper time reports from all service rendered to be certified by those having cognizance thereof, to serve as a basis for the preparation of pay-roll vouchers."<sup>546</sup> Thus Dayton has established a financial system which compares favorably with that found in large business organizations and which is equaled by only a few other cities in this country.

There are also complete and lengthy provisions with reference to the city purchasing agent, the financing of public improve-

ments, the control of franchises, civil service, and the initiative, referendum, and recall.

On the whole, the Dayton charter is a great improvement on those in common use, but it is still far from being perfect. There are weaknesses in this as well as in other charters—a number of which have already been pointed out by charter experts. But it must be admitted that the lines laid down in the Dayton charter are in the right direction, and it only requires time and experience to improve and perfect the plan step by step.<sup>547</sup>

#### THE CITY-MANAGER PLAN IN OTHER CITIES OF OHIO

Among the charters drafted following the adoption of the home rule amendment to the Ohio Constitution, those of Dayton, Springfield, Youngstown, and Elyria were of city-manager variety. The proposed Youngstown charter deserves special mention since it added to the city-manager plan, among other features, the preferential system of voting. It provided for a council of nine members, nominated from wards but elected at large for a term of four years. The mayor was elected by the council from among its own members. His chief functions were to appoint all standing and special committees of the council and to cast two votes in case of a tie. For the exercise of administrative functions a general director was provided whose duties and powers were, in general, similar to those conferred upon the city managers of other cities. But the only deviation from the standard city-manager charter was the five-year residence requirement at the time of his appointment. Provision was also made for an administrative council which should consist of the general director, the director of law, the director of finance, and the heads of departments and divisions, and which should meet at least once a month.<sup>548</sup>

The Elyria charter was not materially different from the Dayton charter, except that the title "director of public affairs" was used instead of the familiar term "city manager". Another and more serious deviation from the Dayton charter was the provision making the solicitor, city clerk, auditor, and treasurer direct employees of the commission rather than of the city-manager. In taking this step the charter framers justified them-

selves on the ground that the auditor and treasurer should act as checks on the city-manager, and that the solicitor and the clerk had more intimate and direct relationship to the city council in the shaping of its policies and the keeping of its records than to the city-manager.<sup>549</sup>

The charters of Youngstown and Elyria above outlined were both defeated. The vigorous opposition of the politicians and the insufficient publicity given to the charter provisions were said to be the main causes for the defeat of the new plan in both cases.

Springfield was the second Ohio city to take up with the city-manager plan, which was adopted by a vote of 5957 to 2652 on August 26, 1913.<sup>550</sup> In essentials the Springfield charter follows closely the Dayton charter. There is a commission of five members, elected at large and for a four-year term. The commission has a president who is to be the official and ceremonial head of the city, corresponding to the mayor of the English borough corporation. The city-manager, chosen by the commission without regard to his political affiliation or residence, is to be the real head of the municipal administration. The city-manager in Springfield is charged with the same duties and given the same powers as is the city-manager in Dayton, with certain deviations. In Springfield the city-manager is charged with the additional duty of seeing that "all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise are faithfully kept and performed; and upon knowledge of any violation thereof to call the same to the attention of the city solicitor, who is hereby required to take such steps as are necessary to enforce the same."<sup>551</sup> As in the case of the proposed Elyria charter, the Springfield plan takes certain of the general officials—including the city solicitor, city auditor, city treasurer, and purchasing agent—out of the control of the city-manager and puts them under the commission. With these two exceptions the provisions in the Springfield charter relating to the city-manager are taken verbatim from the corresponding provisions in the Dayton charter.

The city budget system, the accounting methods, and other features of the Dayton charter also appear almost verbatim in

the Springfield document. A civil service commission and the maintenance of a board of sinking fund trustees are also provided for; and the members of these bodies are under the direct control of the commission. The referendum and recall are available on a fifteen percent petition; but the referendum at a special election requires a petition of twenty-five percent, which is also the number of voters required to submit a proposed ordinance to the electorate.<sup>53</sup>

The next city in Ohio to provide for the commission-manager plan was Sandusky, which adopted a new home rule charter providing for that form of government on July 28, 1914, by a vote of 1396 to 1289.<sup>54</sup> In the main, this charter also follows the Dayton or Springfield model; but some deviations are found in the election sections, which contain no provision for primaries. All candidates are nominated by petition, and a plurality vote is sufficient to determine the choice. With this exception all the other important provisions of the charter are copied verbatim from one or the other of two charters mentioned.<sup>55</sup>

The commission-manager plan, as developed in Dayton and other cities in Ohio or elsewhere, though proved to be superior to any other form of city government previously adopted, has still one serious defect. It has been claimed that the council or commission under this new plan, being a legislative and representative body only, ought to consist of the representatives of various elements of the city population. The system of election provided in the orthodox commission-manager system usually results in the election of the councilmen belonging to one party or one faction of the electorate, and a legislative body representing one party or one faction of the electorate is more or less objectionable under any form of government. It is especially so under the manager plan when the small council, having as its chief function the determination of policy, may also elect the chief executive to carry out the policies so determined. On more than one occasion, the Dayton charter has been subjected to serious criticism not because of any defects in the administrative methods, but because of the fact that the only voters represented in the commission of five, the city's only representative body, are those making up the one group in the city which

framed the charter.<sup>555</sup> But "fairness demands that if the council is to have this elective function it should be a small copy of the entire voting population."<sup>556</sup>

To overcome this defect, which may be real or merely assumed, it has been proposed and advocated by charter experts and writers that the city-manager plan could be made truly democratic and perfect by the introduction of the proportional system for the election of the commission. The proportional system of representation as defined by Mr. C. G. Hoag, Secretary of the United States American Proportional Representation League, is "nothing but a form of ballot, and a set of rules for counting ballots, that make it easy for the voters to build up at a single election—without any primaries whatever—approximately equal constituencies each of which is unanimous, under the actual circumstances existing, in the desire to support a certain candidate."<sup>557</sup> The first important attempt to strengthen and perfect the city-manager plan by the introduction of the proportional system of election was made in Ashtabula, Ohio.

Under the home rule provision of the Ohio Constitution, Ashtabula chose a charter commission to frame a new city charter in the early part of 1914. In view of the examples afforded by Dayton, Springfield, and Sandusky, the charter commissioners naturally turned their attention to the commission-manager plan. But the objections to the possible one-party representation under this new plan were soon raised; and at the suggestion of Mr. Hoag the proportional system for the election of the council was seriously considered by the charter commission. Although Mr. Hoag had convinced some members of the charter commission, especially Mr. W. E. Boynton, of the advantages of the proportional system under the manager plan, the commission rejected the proposal for fear that the introduction of this novel plan might result in the defeat of the charter as a whole at the polls. Such being the case, the proposed charter, which was voted on and adopted in November, 1914, vested the government in a council of seven, nominated by a five percent petition and elected at large on a non-partisan ballot.<sup>558</sup>

The campaign for the adoption of the proportional representation system, however, was not ended with the adoption of the

new charter. The advocates were persistent, and before the election of the new commission, they initiated proportional representation as an amendment, which was voted on and adopted in August, 1915.

The manner of election covered by the amendment is the so-called Hare system. Candidates for the seven commissioner-ships are nominated by petition signed by two percent of the registered voters. But only one petition can be signed by one voter. The names of the candidates are printed on the ballot in a single list without party names or emblems. At the election the voter marks his choices for as many candidates as he prefers, indicating the order of his preference by the figures 1, 2, 3, 4, and so on. Only one ballot can be counted for one candidate. The count of the first choices is made at the precincts, but the count of the other choices is made by the electoral authorities of the city, in the presence of representatives of the candidates, newspaper men, and other interested parties. In order to be elected the candidate must receive the number of votes equal to the "quota" or constituency which is the whole number next higher than the quotient secured by dividing the total valid ballots by eight, a number greater by one than the number of seats to be filled. Candidates receiving, on the first count, the number of votes equal or greater than the "quota" are declared elected; but all votes received by such candidates in excess of the "quota" are surplus of that candidate, which, when taken at random but equally from the ballots of each precinct, must be transferred to second-choice candidates, each one in accordance with the instruction given by the voters' figures on the ballot. After the transfer of all surplus, the votes standing to the credit of each candidate are again counted; and any candidate, when his votes in the process of transfer, reach the "quota", is immediately declared elected. The next step is the elimination of the candidate having the lowest vote, and the distribution of his votes to the other candidates as in the above case. This same process of the elimination of candidates and the transfer of votes is repeated until candidates to the number of seats to be filled have been declared elected.<sup>559</sup>

The principle at the bottom of this system of voting and counting ballots is that the voters are to be divided, in accordance with their will as set forth on their ballots, into seven groups, each comprising one-seventh of the voters—as nearly as possible—and each unanimous in the desire to send into the council a particular candidate. In other words, the system provides in place of the seven territorial constituencies which would elect the councilmen under the ward system, seven unanimous constituencies.<sup>560</sup>

The members of the council thus elected shall hold office for four years; but provision is also made for partial renewal biennially. The council has all the powers of the city government, except as otherwise provided in the charter or constitution. In brief, these powers may be classified into ordinance power and power of appointment. By ordinance or resolution the council may “prescribe the manner in which any power of the city shall be exercised.”<sup>561</sup> The appointees of the council include a city-manager, a city-solicitor, a city treasurer, a health officer, a city auditor, and three civil service commissioners.

Other provisions of the charter, including those dealing with the powers of the city-manager, appropriations, payments and reports, improvements and contracts, and the control of franchises, follow closely the lines laid down in the charters of Dayton, Springfield, and Sandusky. A great number of sections are simply copied verbatim from these charters. The initiative and referendum may be invoked on a ten percent petition and the recall on a twenty-five percent petition.

The next city in Ohio to adopt the city-manager plan was Westerville<sup>562</sup> which elected to operate under the city-manager plan on July 31, 1915, in accordance with the optional city government law, reference to which is made elsewhere in this study.

On June 6, 1916, the voters of East Cleveland approved a home rule city-manager charter by a vote of four to one.<sup>563</sup> The charter, being modelled after that of Dayton and Springfield, provides a commission of five members, elected at large for terms of four years and partially renewed every two years. A municipal judge is also elected at the same time. The commission appoints the city-manager and the director of finance.



The city manager is given full control and supervision of the administration and appointment of all other officers and employees not enumerated in the charter. Even the civil service commission is appointed by the city-manager, but in this case the approval of the city commission must be first secured. The city commission also frames and adopts the rules and regulations for the civil service.

In order to prevent the encroachment of the commission on the duties and powers of the city-manager, the charter contains an express provision prohibiting the commissioners, individually, from interfering in any manner with the administration of affairs or with the appointment and removal of officers and employees.

The initiative, referendum, and recall are provided; but primaries are eliminated. Candidates are nominated on petition and elected on a non-partisan ballot.

The unique feature of this charter is the provision for woman suffrage. In the State of Ohio the right to vote was, until very recently, limited only to "male white" citizens. But the framers of the charter were of the opinion that the home rule amendment, granting authority to exercise all the powers of local self-government, carried with it the power, by charter provision, to extend the right to vote to the female sex. This provision, however, was submitted separately, and after approval by the voters became a part of the charter. Before this provision went into effect, however, Ohio had extended the right to vote to women.

The first commission was elected in November, 1916, but the remainder of the charter did not take effect until January 1, 1918.

#### THE CITY-MANAGER PLAN IN ARIZONA, COLORADO, CALIFORNIA, AND OREGON

The city-manager plan, although originating in the East, seems to appeal very strongly to the urban centers in the West and South. In the year 1913 there were numerous cities in Arizona, Colorado, California, and Oregon which were considering the adoption of this new plan. In Arizona three cities, Douglas,

Phoenix, and Bisbee, became interested in this form of city government. Douglas drew up, under the home rule provision of the Constitution, a city-manager charter of the orthodox type; but owing to the vigorous opposition of the politicians and ill-informed citizens, and to certain incidental features of the charter, the people failed to adopt the charter at the polls. The same fate fell to a similar charter in Bisbee for reasons not unlike those operating in Douglas.<sup>564</sup>

Success, however, met the city-manager plan in Phoenix, the capital of Arizona, which is thus far the only city in the State to adopt a home rule charter. Phoenix drew up in the latter part of 1913 a charter drafted on the same lines as was the defeated charter of Douglas, and adopted this instrument on October 11, 1913, by a three to one majority.<sup>565</sup> This charter, which went into effect in April, 1914, provides for a commission of five members and a city-manager. The duties of the city-manager are similar to those provided in charters of the same kind, including the general supervision and direction of the administration of the city government, supervision of the official conduct of all appointive city officials, except the auditor and city magistrate; supervision of the performance of all contracts for work done for the city; the purchasing of all materials and supplies of the city; the appointment and removal of all employees and officials of the city, unless otherwise provided in the charter; and the submission of monthly reports of the condition in the city to the commission.<sup>566</sup>

The unusual features of the Phoenix charter with reference to the city-manager are that his salary is definitely fixed in this instrument at \$5000 per year, and that he is required to be a resident of the city at the time of his appointment. The residence provision was inserted in the charter in order to meet the requirements of the State Constitution.

Another Arizona city having an officer bearing the title of "city manager" is Tucson. At the November election of 1914 the Republican ticket, which was carried at the polls, was pledged to employ a city-manager and to follow the general plan concerning the office in so far as the State law permitted. This pledge was fulfilled when Mr. C. K. Clark, a non-resident of the

city and the State, was appointed in the spring of 1915 to the new position, which was created by an ordinance of the city council. But in Tucson, though there is a city-manager, there is no commission-manager plan. The city-manager of Tucson is not a charter officer and exists only at the pleasure of the city council. Furthermore, the mayor and council possess the legal rights to make all appointments and to exercise all the corporate powers of the city. The city-manager possesses only such powers as the city council may deem fit to grant to him.<sup>567</sup>

Montrose, Colorado, adopted a home rule city-manager charter in January, 1914. This charter provides for a commission of five members, elected at large for a two-year term. These members constitute the city council and the legislative body of the city, which appoints the city-manager, city attorney, police magistrate, board of library commissioners, and board of cemetery commissioners. The city-manager is the executive head of the government. His duties and powers as enumerated in the charter are very general and are grouped under four headings: the appointment and removal of all officers not enumerated in the charter; attendance at all meetings of the council, with the right to take part in the discussion but not to vote; the furnishing of information to the council with reference to the financial condition and needs of the city; and the performance of other necessary duties as prescribed in the charter or required of him by the council. Furthermore, he is the purchasing and sales agent for all personal property and supplies for the city, and the manager of all public works and improvements. The city-manager is not required to be a resident of the city. He may be removed by a unanimous vote of the commission or by popular recall as any other city official.<sup>568</sup>

In California the city-manager plan first appealed to Whittier, a small city of a little more than 4500 inhabitants. Like the cities of Ohio, this little California town enjoys the privilege of drawing up its own charter. In the process of adopting a new charter in the early part of 1913 the board of freeholders took up the "Lockport Proposal" as the basis and produced a charter similar to that model. But opposition to this novel plan, both from the politicians and ill-informed citizens, was so strong that the charter was defeated at the polls.<sup>569</sup>

But the result in Whittier did not discourage the charter board in Bakersfield, the first city in California which succeeded in adopting a home rule city-manager charter. On November 7, 1914, the voters of the city voted in favor of the new charter at a special municipal election. Subsequently, the legislature of California, by a concurrent resolution, ratified the proposed charter, which went into operation in April, 1915.<sup>570</sup>

The charter of Bakersfield provides a council of seven members, one to be chosen from each of the seven wards of the city by the electors thereof for a two-year term. The council appoints a city-manager, a treasurer, an assessor, an attorney, and a clerk for indeterminate terms; and also an auditor, a police judge, and public welfare commissioners for two-year terms. The city-manager, who may or may not be a resident of the city at the time of his appointment, is given the general supervision and direction of the administrative affairs of the city government. He receives a salary to be fixed by the council, and his special duties, as enumerated in the charter, are exactly the same as those provided in the charters of the Ohio cities mentioned above. The officers to be appointed by the city-manager are also enumerated in the charter, and the list includes the chief of police, the chief of the fire department, the city engineer, the superintendent of streets, the health officer, and the building and plumbing inspectors. Detailed provisions are also made with reference to finances and taxation, including a budget system and a system of assessment, the administrative departments, municipal ownership and operation of public utilities, public improvements, and public education. The initiative, referendum, and recall are all available on petition of twenty-five percent of the voters.

Santa Barbara was the next city in California to draft a home rule city-manager charter, which was adopted in September, 1915, and went into operation on January 1, 1916, after being ratified by the legislature. The charter provides for a council of five members each elected for a four-year term. As usual, this council is a policy-determining body, and the execution of the policies so determined is entrusted to a city-manager, who is appointed by the council and who may or may not be a resident of the city at the time of his appointment.<sup>571</sup>

San Jose soon followed, and a city-manager charter patterned after the Dayton plan has been in effect since July 1, 1916. For the performance of legislative functions there is a council of seven members elected through the double process of a non-partisan election and for terms of six years. This council appoints the city-manager, city clerk, members of a civil service commission, and of a city planning commission. The city-manager is the administrative head of the city, and he in turn appoints the city treasurer, city engineer, city attorney, chief of the police department, chief of the fire department, board of health, health officer, superintendent of parks, and board of library trustees. All officers appointed by the council, with the single exception of the city-manager, may be removed by an affirmative vote of four members after a public hearing, but the city-manager may be removed without any hearing. The city-manager in making his removals is required to file a statement of the reasons for removal with the civil service commission, and the person whose removal is sought must have an opportunity to be heard in his own defense.<sup>673</sup>

The San Jose charter was drafted by Thomas H. Reed, professor of Political Science at the University of California, who was subsequently appointed to be the first city-manager of the city at a salary of \$6000 per annum.<sup>674</sup>

As early as October 1, 1913, the city-manager plan was adopted in La Grande, a small city in Oregon. The original charter went into effect in January, 1914, but it was later amended in December, 1915. As amended the charter provides for a commission of three members whose compensations are fixed at five dollars per meeting. Candidates for the commissionerships are nominated by petition and elected at large by the qualified electors of the city, but provision is made that "when the number of candidates is more than three times the number of offices to be filled, each voter shall have the right to vote for as many first choice candidates as there are offices to be filled, and may have second or third choice candidates when it becomes necessary by reason of the number of candidates, to obtain a majority election."<sup>675</sup>

The commission appoints a city-manager and a municipal judge whose tenures of office are subject to the discretion of the commission; and both of them may be removed at any time with or without cause. Other duties of the commission are to enact and repeal "such ordinances as shall be required by the public good, take care that the business character and ability of the General Manager is sufficient to enforce the municipal law, perform his duties and services for the best interest and welfare of the municipal government, and in a careful, prudent and businesslike manner."<sup>75</sup>

The city-manager, whose maximum salary is \$3600, is vested with "absolute control and supervision over all officers and employes of the city except the commissioners and the municipal judge". With the exception of the commissioners and the municipal judge the city-manager appoints all officers provided for in the charter, including a city recorder, treasurer, city attorney, chief of police, chief of the fire department, city engineer, superintendent of water system, city health officer, and street superintendent. He is also authorized to "employ such additional help as may be necessary to carry on and perform the business affairs and departmental work of the city."<sup>76</sup> All the officers and employees appointed and employed by the city-manager are subject to removal by him, with or without cause. But the city-manager himself, being accountable to the commission for his actions, conduct, and management of the business, may also be discharged at the will of the commission with or without cause. The conception of the city as a business enterprise is further emphasized by a provision of the charter which says that the city-manager "shall see that the business affairs of the municipal corporation are transacted in a modern, scientific and business-like manner and the services performed and the records kept shall be as nearly as may be like those of an efficient and successful private corporation."<sup>77</sup>

#### THE CITY-MANAGER PLAN IN MICHIGAN AND MINNESOTA

Another very active field for the city-manager is to be found in one of the middlewestern States, namely, Michigan. The first city in Michigan to avail itself of the city-manager plan

through the home rule provision in the constitution was Cadillac, which adopted a new charter providing for that form of government in 1913. The charter, which was adopted on December 9, 1913, and has been in operation since January, 1914, provides a commission of five members including the mayor. Candidates for the four commissionerships are nominated from voting precincts and elected at large by a preferential ballot affording three choices. They serve without compensation and hold office for four-year terms; but the term of office of the mayor is two years.

The general manager appointed by the commission is "the administrative head of the municipal government under the direction and supervision of the Commission." He has all the duties and powers given to similar officers in other cities; but besides these customary duties and powers he is given "active control of the fire, police, and engineering departments of the city". To make this provision effective he is given exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, and also of all firemen and other officers constituting the fire department. Furthermore, he is required to manage and control all the charitable, correctional, and reformatory institutions and agencies belonging to the city; and to manage and supervise all public improvements, works, and undertakings of the city for which no other provision is made.<sup>578</sup>

The city of Manistee adopted a new charter establishing the city-manager plan on December 15, 1913. There is a council of five members which exercises the legislative powers of the city. Candidates for councilman are nominated by petition and elected on a preferential ballot with two choices. When elected, they are to hold office for a term of five years. Elected at the same time with the councilmen are four justices of peace and one constable, each of whom is elected at large by the qualified electors of the city. By a majority vote the council appoints a city clerk, city treasurer, city-manager, city attorney, three assessors, and other officers and employees from time to time as it may deem necessary to carry the charter into effect. The city-manager is the administrative head of the city government.

and has all the powers and duties provided in the orthodox type of city-manager charter. Detailed provisions are also made with reference to the finances of the city, the assessment and collection of taxes, public and special improvements, city bonds, the control of franchises, public education, and direct legislation by the people.<sup>579</sup>

Big Rapids followed in February, 1914, when the commission-manager charter was voted on and adopted. The government of the city is vested in a commission of three members, including the mayor. Candidates are nominated by petition and elected on preferential ballots which afford three choices. When elected, they hold office for two years. The mayor is the executive head of the city, but is deprived of the veto power. The commission is empowered and required to appoint a general manager and other administrative officials. The general manager, who holds his office for one year or until his successor is appointed, is given charge of all public works, the supervision of improvements, and the employment of subordinate officials.<sup>580</sup>

Toward the end of the year 1914 an elective charter commission in Jackson was busy in drafting a home rule charter for the city. After diligent study of many other charters and visits to a number of cities then operating under the commission-manager plan, the charter commissioners were convinced of the superiority of the new plan; accordingly, they incorporated into the proposed charter a number of features of the advanced type of charter, chief among them being the city-manager plan. The proposed charter was submitted at the general election held on November 3, 1914, and adopted by a popular vote. A charter election was held on December 8th, and the new government has been in operation since January 1, 1915.<sup>581</sup>

The government of the city is vested in the usual commission of five members, including the mayor. The commissioners are elected through the process of non-partisan double election and hold the offices for four years, with partial renewal biennially. The mayor is elected for a two-year term and is authorized to exercise the powers conferred upon sheriffs to suppress disorders.



For administrative purposes, the city commission appoints a city-manager, city clerk, city treasurer, city attorney, city physician, health officer, sanitary inspector, one supervisor for each ward, and one or more building inspectors. Other officers of the city, including the chief of police and chief of the fire department, are appointed by the city-manager with the approval of the city commission.

The city-manager is given "charge of the administration of municipal affairs under the direction and supervision of the city commission." After enumerating the various powers and duties of the city-manager, including the supervision of public works, the active control of the fire and police departments of the city, and numerous other functions similar to those found in charters of the same type in other cities, the charter proceeds to specify the qualifications of the chief administrative officer of the city. This specification is rather unusual and reads as follows:

The City Manager shall be a man of good business and executive ability, and, if practicable, a civil or mechanical engineer. He may or may not be a resident or elector of the City at the time of his appointment, but other things being equal, preference shall be given to a citizen of Jackson.<sup>583</sup>

The charter also contains provision for the appointment of advisory committees and of a purchasing agent as found in the Dayton charter; for budgetary practice and bonding; for the assessment and collection of taxes; for the control of franchises; and for direct legislation by the people.

Albion and Petosky, two small cities of five thousand inhabitants each, joined the movement in the same year. Both adopted city-manager charters of the orthodox type in the fall of 1915, and both charters went into effect on January 1, 1916.<sup>584</sup>

The next important city to adopt the city-manager plan in Michigan was Grand Rapids. According to the Federal census of 1910 there were 112,571 inhabitants living in the city of Grand Rapids—only about 400 less than in Dayton. Being the second largest city in the country operating under the city-manager plan of city government, the charter of Grand Rapids deserves more than a bare mention in this study.

On May 4, 1916, the charter commission of Grand Rapids adopted a proposed revised charter which, according to the Con-

stitution of Michigan, was to be first submitted to the Governor of the State for approval. Such an approval was secured on May 17th. On August 29, 1916, by a vote of 7693 to 6021 the charter was adopted. But it did not go into effect until May 1, 1917.<sup>584</sup>

The new charter provides for a commission of seven members. One of the commissioners is to be nominated and elected by the city at large, and two commissioners are to be nominated from each of the three wards but elected at large. There is a process of double non-partisan election, and candidates for the primary are nominated by petition signed by fifty to one hundred qualified electors of the electoral district from which the particular candidate seeks nomination. A mayor and a president are chosen by the commission from its own members. They are to hold office for two years and receive a salary of \$1200 per annum. The mayor receives an additional three hundred dollars.

Besides the commissioners there are elected at the same time a comptroller, four county supervisors, one constable in each ward, and five library commissioners and two justices of the peace in the city at large. But these officers, with the exception of the comptroller, are inconspicuous officers who do not form an integral part of the city government.

Subject to the Constitution and general laws of the State and the charter, the commission is authorized to pass all laws and ordinances relating to municipal concerns, and to appoint a city-manager, a city attorney, a city clerk, a city treasurer, and three assessors to be chosen one from each ward. Other functions of the commission are to act as a civil service board; to pass upon all appeals from the assessments on the tax rolls as a board of review; and together with the city treasurer, comptroller, three assessors, and twelve supervisors (four to be elected from each ward), to represent the city on the county board of supervisors.

One of the unique features of the Grand Rapids charter is that providing for municipal coöperation which reads as follows:

The City Commission and City Manager shall seek to bring about co-operation among and between the cities of Michigan in whatever way may seem best for the purposes:

(a) Of securing a uniform system of accounting among said cities so that intelligent comparison may be made, and so that each city may profit by the experience of all.

(b) Of enabling said cities to work out plans for co-operative buying at wholesale rates.

(c) Of promoting the prosperity, welfare and happiness of the citizens and taxpayers.<sup>585</sup>

This provision indicates that cities in this country are beginning to realize the importance of coöperation with other cities for the solution of difficult problems. Concerted action is everywhere an important factor in any phase of activity—a rule from which municipal affairs are not excepted. But it is only in the Grand Rapids charter than any indication of this movement on the part of cities is to be discovered.

The city-manager has charge of the administration of municipal affairs under the direction and supervision of the city commission. He is responsible for the enforcement of all laws and ordinances, and is vested, among other powers, with the appointment and removal of the administrative and other subordinate officers and employees. The following officers are specifically mentioned in the charter: director of public service, who shall have charge of the department of public service; director of public safety, who shall have charge of the department of public safety; director of public welfare, who shall have charge of the department of public welfare; and purchasing agent, who shall have charge of the purchasing department.<sup>586</sup>

Besides these administrative departments which are under direct control of the city-manager, the following departments are also established by the charter: an auditing department, of which the city comptroller is the head; a taxation department, of which the city assessors are the heads; a finance department, of which the city treasurer is the head; and a department of law, of which the city attorney is the head.

Before the raising of any money by the city or the levy and collection of any tax each year, the city-manager must submit to the city commission an estimate of the expenditures of the city for the fiscal year. On the basis of this estimate the city commission provides by ordinance for a budget and a tax sufficient, with other resources, to pay the estimated expenditures, the

maintenance of all sinking funds, and the interest on all municipal debts. In the budget there must be specified the several items for which appropriations are to be made, including the sinking fund, departmental appropriations, and the contingent fund. As a measure to provide and insure full publicity and popular scrutiny of the budget, the charter requires the city commission to mail to "every registered voter annually, and at least twenty days before the budget ordinance is brought up for final adoption, a summary of the proposed budget."<sup>587</sup>

Another significant departure of the Grand Rapids charter from the charters of the conventional type is to be found in the provision for the appointment by the city commission of a board of art and museum commissioners for the control and management of the museum and all property of the city intended for the promotion of the arts or the building up of an art collection; and for the establishment of a house of correction and work farm.

Turning to Minnesota, it appears that at the legislative session of 1913 Representative Kerry Conley of Rochester introduced a bill to permit cities to adopt the city-manager plan, which was little more than a reproduction of the original "Lockport Proposal". But the bill, although it passed the lower house, failed to be reported out of the Senate.<sup>588</sup>

At the same time, several cities of the State undertook to adopt the city-manager plan. Attempts were made in the fall of 1913 both in Little Falls and in Brainerd. But in both cases the voters failed to adopt the new plan.

But these failures did not discourage the citizens of Morris, a little town of about two thousand inhabitants, from attempting the same thing. The Morris charter, which was adopted in the fall of 1913, prescribes that the legislative and administrative powers of the city shall be vested in a commission of three members, subject to popular control through the process of direct legislation and the recall. The commissioners serve without compensation for a four-year term. The actual administrative work of the city government is vested in a city-manager, whom the commission is authorized to appoint and to invest with such administrative duties and powers as are necessary. Candidates

for the commissionership are nominated by petition and elected on a preferential ballot with first and second choices. The city-manager is given general control of administrative affairs. He holds his office for one year and receives a salary of \$1600 and also an allowance for horse and conveyance.<sup>589</sup>

#### THE CITY-MANAGER PLAN IN TEXAS AND THE SOUTH

Texas, the home of the commission form of city government, is also a very active field of operation for the city-manager. The movement in Texas began with Amarillo, which was also the first city to abandon the regular commission form for the new type. The commissioner-manager plan was adopted in 1913, and the charter establishing that form of government went into effect in January, 1914. By this new home rule charter the administration of the city's affairs is vested in a commission of three members, including the mayor, all of whom are elected at large. This commission is required to meet as often as once a week in regular sessions, and as often as necessary in called sessions. Among the duties of the commission the most important is the appointment of a city-manager, who shall be the actual head of the municipal administration and shall hold the office at the pleasure of the commission. The city-manager is paid a salary of \$2400 per annum.<sup>590</sup>

Taylor and Denton in the same State were added to the list of cities having the city-manager a few months later. Both cities adopted the plan in April, 1914.

The Denton charter provides for a commission of five members elected at large and serving without remuneration. The city-manager, or mayor, which title is used in Denton, is appointed by the commission and serves during the pleasure of the commission for a term of not exceeding two years; but he may be removed at any time, with or without notice. The city-manager, in turn, appoints the heads of all departments of the city subject to the approval of the commission.<sup>591</sup>

In Taylor the government is vested in a commission of five members elected for two-year terms. Nomination by petition and election by preferential ballot are features of the election provisions of the charter. After the election the commission

appoints a number of enumerated administrative officers, among whom is the city-manager.<sup>593</sup>

With the commission-manager plan there is no advantage in making the commission very small. When the commission consists of three or five members in a fairly large city there is a certain inadequacy on the representative side of the government. Charter experts and city-managers—like Upson, Waite, Hoag, and others—are impressed with the problem and suggest proportional representation to insure a proper diversity in the commission. On March 6, 1915, Sherman, Texas, adopted a home rule city-manager charter which deviates from the preceding charters of the same type by providing a commission of sixteen members and a city-manager. Indeed, Sherman is the first city which varied the orthodox type of the plan in a way that is worthy of copying when large commissions begin to come into vogue. In order not to violate the short ballot principle, the Sherman charter provides that these sixteen commissioners shall hold their offices with rotating tenures; and in order to provide a more expedient way of handling the business, there is an executive committee of three within the commission, chosen by it and holding office at its pleasure, to handle details and to work in special intimacy with the manager.<sup>594</sup> Yoakum, Tyler, San Angelo, and Brownsville are other cities in Texas that were added to the list of commission-manager governed cities in 1915.<sup>595</sup> All these charters are of the usual orthodox type.

*Oklahoma.*—Oklahoma fell into line in the fall of 1914 when Collinsville adopted, on November 24th, a new charter which provides for a governing body consisting of three commissioners, and creates the office of "Business Manager". The incumbent of the last named position holds the office at the pleasure of the commission. The "Business Manager" is "vested with the executive and judicial power and authority of the city, subject to supervision and control by the Board of Commissioners." He is required to make nominations for appointment to all offices, which are to be confirmed by the board, and to make a monthly financial statement.<sup>596</sup>

*Florida.*—Another accession to the commission-manager roll is the State of Florida, where two cities succeeded in securing this new type of charter in 1914 and 1915. These two cities are Lakeland and St. Augustine. In the spring of 1914 Lakeland created, by ordinance, the city managership under the general power over administration organization conferred upon that town by its charter.<sup>596</sup>

St. Augustine adopted the plan on June 7, 1915, by a vote of 415 to 397.<sup>597</sup> The charter provides the usual commission of three members, including the mayor. They are elected at large and serve for three years, with partial renewal annually. They receive no compensation. The city-manager, appointed by the commission, has the usual powers and duties conferred upon such an officer. In addition he is also required to act as purchasing agent for the city. The St. Augustine charter, however, contains the following unique statement of the official relations between the city commission and the city-manager, the like of which is to be found in few other charters.

Neither the Commission nor any of its members shall dictate the appointment of any person to office or employment by the city manager or in any manner prevent the City Manager from exercising his own judgment in selecting the personnel of his administration. The Commission and its members shall deal with the administrative service solely through the City Manager and neither the Commission nor any member thereof shall give orders to, nor make requests of, any of the subordinates of the City Manager, either publicly or privately. Any such dictation, orders, requests, or other interference upon the part of a member of the City Commission with the administration of the city shall constitute a misdemeanor and upon conviction thereof before a court of competent jurisdiction, any member of the City Commission so convicted shall be fined not exceeding two hundred dollars or be imprisoned not exceeding six months, or both, at the discretion of the court, and shall be removed from office.<sup>598</sup>

*South Carolina and North Carolina.*—Another significant addition to the list of commission-manager governed cities was "Little Old Beaufort" in South Carolina. In February, 1915, Beaufort adopted a city-manager charter of the conventional type by a small margin of votes.<sup>599</sup> The unique feature of the Beaufort charter is the provision that the city-manager is also to be the secretary of the chamber of commerce under the new régime. Like other small towns of the country, Beaufort had

been operating under an unpaid town government and a chamber of commerce. But the activities of both the government and the chamber of commerce were hampered because of the lack of funds. As a way out of this fiscal difficulty it was finally decided to unify the functions of the two organizations in charge of one person, hoping that an abler man could be secured by the combined resources of the city and the chamber of commerce than either could afford alone.<sup>600</sup>

By a special act of the legislature approved on March 8, 1915,<sup>601</sup> the city of Elizabeth, North Carolina, also secured a city-manager charter of the orthodox type. As the governing body of the city, it provides for a board of eight aldermen, two from each of the four wards into which the city is divided. Their term of office is two years. The mayor presides at the meetings of the Board and is the official head of the city for civil process. Contrary to the usual practice in cities having the same type of charter, the mayor in Elizabeth City has the veto power upon ordinances, contracts, and franchises.

The board of aldermen appoints the city-manager, health officer, and city attorney. Other officers of the city, including the city auditor, city tax collector, street commissioner, chief of fire department, harbor master, chief of police, and building inspector, are appointed by the board upon the recommendation of the city-manager. The city-manager, being the chief administrative officer of the city, has the usual powers and duties of similar officers in other cities. He is also the purchasing agent of the city and is generally responsible for the conduct of all the departments under his control. His salary is to be determined by the board, but the maximum limit is fixed by the charter at \$2400 per year.

*West Virginia.*—On May 27, 1915, the city-manager plan made its entry into the State of West Virginia, when Wheeling adopted by a substantial majority a special charter providing that form of government.<sup>602</sup> The charter, which did not go into effect until January, 1917, provides a city council of nine members to be nominated one from each ward and nine at large, and elected at large through the process of a double non-partisan election. The mayor, chosen by the city council from among



its own members, is the official head of the city for the purpose of serving civil process and for all ceremonial purposes. The council appoints a city-manager, city clerk, city solicitor, judge of the police court, chief of police, and commissioners of loans and bond issues. All other officials are appointed by the city-manager.

The city-manager, who is defined in the charter as "the administrative head of the municipal government", and is "responsible for the efficient administration of all departments", has the usual powers and duties of similar officers in other cities. But his authority over the subordinate officers and departments of the city is more clearly defined in this charter than elsewhere. The charter provision reads as follows:

The city manager shall have authority to provide for the appointment of such officers, the appointment of whom are not vested in the Council, as shall be necessary or proper to carry into full effect any authority, power, capacity or jurisdiction which is or shall be vested in the city of Wheeling, or in the council thereof, or in such city manager; to grant, in writing, to the officers so appointed the powers necessary or proper for the purposes above mentioned; to define their duties in writing; to allow them reasonable compensation (said compensation to be approved by council), and to require and take of all or any of them such bonds, obligations or other writings as he shall deem necessary or proper to insure the proper performance of their several duties.<sup>600</sup>

#### THE ORIGIN OF THE CITY-MANAGER PLAN IN IOWA

In Iowa there were cities which had the office of city-manager before there were any provisions on the statute books sanctioning the creation of such an office. Clarinda was the first city in this State to create, by ordinance, the office of "Business Manager", and was said to be the third city in the country to have such an officer. In April, 1913, the mayor and council were elected with the understanding that they would appoint a city-manager to take up the administrative work of the city government; and this understanding was carried out immediately after the election.<sup>601</sup> The incumbent is appointed by the mayor and holds office for a one-year term. But he may be reappointed indefinitely. The city-manager is also required to perform the duties of street commissioner.<sup>602</sup>

The example of Clarinda was followed by Iowa Falls in April, 1914, when a similar office was created by an ordinance of the city council. In Iowa Falls the city-manager is required to perform all the duties that were formerly performed by the city clerk and the street and road commissioner; and he is also vested with the power of supervision over all the municipal departments except the police department.<sup>606</sup>

But the office of city-manager in Clarinda and Iowa Falls before 1915 was an extra legal institution which existed without legislative authority. The situation, however, was changed in 1915 when the Twenty-sixth General Assembly passed an act to authorize "all cities and towns, except cities under the commission form of government and cities having a population of more than twenty-five thousand" to "provide by ordinance for the creation of the office of city manager and to fix likewise the duties and powers and compensation of such officer."<sup>607</sup>

As provided in this act, the city-manager is to be appointed by "a majority vote of the city or town council at a regular meeting of such body", and to hold office at the pleasure of the council. By a majority vote of the council he can be removed at any time.

After the selection and appointment of the city-manager, the city or town may by ordinance require him to "perform any or all of the duties incumbent upon the street commissioner, or manager of public utilities, cemetery sexton, city clerk and superintendent of markets", and to "superintend and inspect all improvements and work upon the streets, alleys, sewers, and public grounds of the city or town", and to "perform such other and further duties as may be imposed upon him, and to possess such other and further power as may, from time to time, be by ordinance conferred upon him."

The act further provides that "whenever by ordinance or resolution of the council the powers and duties heretofore vested in any other appointive municipal officer are to be wholly performed by said city manager, then no appointment of such appointive officer shall be made, and any appointment of such officer, made prior to the adoption of such ordinance or resolution shall be hereby cancelled." It is hoped that through such a provision in the act the administration of the city or town

where the city-manager is appointed, may be gradually centralized and responsibility fixed.

Aside from the act which was passed to legalize an existing institution, the legislature of Iowa passed, at the same session, another act incorporating the city-manager plan of government into the legal system of the Commonwealth. The plan was originally introduced in the House by Representative McFarlane in "a bill for an act providing for the government of cities and incorporated towns by a council and manager; for the adoption of such plan of government by special election, and for penalties for violation of the provisions hereof."<sup>608</sup> The bill was passed by the House by a vote of ninety-eight to eight; and the Senate later passed it by a unanimous vote. It became a law in May, 1915, when it was approved by the Governor.<sup>609</sup>

Like the commission government law, the city-manager law of Iowa is a permissive, optional, general law, applicable to any city having a population of over two thousand.<sup>610</sup> In order to organize under the provisions of this act, the first step in the procedure of adopting the plan is the drawing of a petition by a certain number of electors asking for the submission of the question to a vote of the people. The number of electors signing such a petition must be equal to twenty-five percent of the votes cast for all candidates for mayor at the last preceding election. The petition is then to be filed with the city clerk, and within two months a special election is to be held in accordance with a proclamation of the mayor. A majority of the votes cast at such election is all that is necessary to bring about the adoption of the plan. If the plan is rejected at the polls the question may not again be submitted within two years.

After the plan has been adopted, the next important step is the organization of the city government. In cities having twenty-five thousand inhabitants or over there are to be elected five councilmen to exercise all the executive, legislative, and judicial powers of the municipal corporation; and in cities having less than twenty-five thousand inhabitants, there is provision for a council of three members. The law, however, further specifies that "in any city having a population of twenty-five thousand or more, and less than seventy-five thousand, of which the terri-

tory embraced with the boundaries of such city lies in two townships, which are divided by a watercourse, four councilmen shall be elected, two of whom shall be residents of, and elected from that part of the city lying within each of such townships." There is probably no better illustration than this provision to indicate the means by which a State legislature is able to evade the constitutional prohibition against local or special legislation. The city-manager law of Iowa was primarily enacted for the city of Waterloo, and incidentally for other cities; and in order to make the organization of the city government under the new plan meet the special local conditions in that city, such an absurd provision as the above was inserted into the law.

The councilmen may be elected at the next regular city or town election, or at a special election called by proclamation of the mayor, if there is no regular election within the following year. The councilmen elected begin their tenure of office on the first Monday after the election, and are to serve "until the next regular biennial municipal election, and until their successors are elected and qualified." But provision is made to terminate the terms of different councilmen in such a way that not all of them will go out of office in the same year.

Candidates for councilmen to be voted on at the election are nominated by petition signed by at least ten electors for every one thousand inhabitants of the city or town. The petition must be filed with the city clerk ten days before the election day; and only the names of the persons so nominated are to be put on the official ballot. At the election the judges and clerks are to be appointed by the city authority just as in any regular election. "The election shall be conducted, the vote canvassed, and the certified return thereof made by the judges of such election as provided by law."

The council when elected and organized, selects one of its members as "chairman and presiding officer who shall be designated as mayor of the city or town in which he is elected"; and "shall be recognized as the official head of the city or town, by the courts and officers of the State, upon whom service of civil process may be made." He is also authorized to "take command of the police, and govern the city by proclamation at

times of public danger, or during an emergency", concerning the existence of which he himself is to be the judge.

The councilmen serve and perform all the required duties without compensation, and are to meet in regular session at least once every month and in special sessions from time to time when called by two councilmen. All the meetings of the council, whether regular or special, are open to the public. In cities having five or four councilmen, three members constitute a quorum; and in cities having three councilmen, two members constitute a quorum. A majority vote is necessary to pass every resolution and ordinance, which must be recorded before going into force. Every motion, resolution, and ordinance must be reduced to writing before being voted upon, and upon every vote in the council the yeas and nays must be called and recorded.

It has already been pointed out that the council or commission under the city-manager plan is primarily a legislative body. In this capacity the councilmen "can promulgate in tangible form the policies they may, in the light of their experience, determine upon."<sup>611</sup> But aside from this chief function the council under this plan is unavoidably accorded a limited appointive power. This power is vested in the council because it is thought that the members of this body are better qualified than the electorate to select the chief administrative head; but it is limited so as to let the chief executive select those for whose work and efficiency he is responsible. Accordingly, the Iowa law imposes upon the city council the duty of selecting the city-manager. It is also mandatory on the council to appoint a city clerk, a police judge or magistrate, a solicitor, an assessor, the members of the library board, and three persons constituting a local board of review; but the appointment of a corporation counsel and assistant solicitors is left optional with the council. The compensation and tenure of office of the officers so appointed are determined by the council. All the other city officers and employees are to be appointed by the city-manager.

The city-manager is defined in the law as "the administrative head of the municipal government of city or town in which he is appointed." But it by no means follows that the Iowa law makes it possible for the exercise of a great amount of power by a single

man. On the contrary the city-manager is under the constant direction and supervision of the council, and holds his office at the pleasure of the council.

Before entering upon the duties of his office, the city manager is required to take an official oath to support the Constitution of the United States and of the State of Iowa, and to perform to the best of his ability, faithfully, and honestly, the duties of his office. A bond in favor of the city is also required so as to insure the faithful performance of his duties.

In making the appointment of the city-manager, the council "shall consider only the qualifications and fitness of the person appointed", neither his political affiliation nor his residence being taken into account. To guard against any corrupt alliance between the city-manager and councilmen, provisions are made forbidding the appointment by the manager of any councilman to any office, and his taking part in any election for the purpose of electing the councilmen. Violation of these provisions is a misdemeanor, and is punishable according to law.

The city-manager under the Iowa law exercises all the usual powers of similar officers in other cities; but in addition, he is specifically charged with certain duties which in other cities are usually the functions of other administrative officers. In the first place, he is the purchasing agent of the city, as the law requires him to "make all purchases of material and supplies, and see that such material and supplies are received, and are of the quality and character called for by the contract." Again, he is charged with the management of numerous public works including streets, sewers, markets, sewage disposal, municipal lighting works, transportation, and recreation facilities. He is also given "the active control of the police, fire and engineering departments of the city or town"; and finally, he is authorized to issue licenses at his discretion, and to revoke the same at his pleasure.

In conformance with the recent tendency to emphasize the importance of improving the financial condition of the city, the Iowa law contains a reference to the manner of making the budget. It requires the manager to "prepare and submit to the council, an annual budget on the basis of estimates of the ex-

penses of the various departments of the city or town." In these estimates the expenses of each department for the preceding year must be shown; and indication must also be made as to "wherein an increase or diminution is recommended for the ensuing year." These estimates are required to be made public through the columns of the official newspapers of the city for the information of citizens two weeks before they are submitted by the manager to the council; and printed copies of the same are to be furnished to any citizen upon request. Publicity and safeguards with respect to the financial interests of the city are further guaranteed by giving the citizens full opportunity to make any objections or protests "to any item or items in such budget, or to any omissions therefrom."

But the budgetary system as a whole can not be considered as perfect. "The budget should not only be a statement of appropriations, but also of the revenues from which these appropriations are to be disbursed."<sup>612</sup> In so far as the Iowa law fails to make provision for the estimates of the revenues, it fails to provide a satisfactory budgetary system, although this law shows in this regard an improvement over the commission law, which does not even contain the word "budget", but uses the term "appropriations" instead.

The provisions respecting other administrative details in the Iowa city-manager law, like most other commission laws, are very few. The law requires, in the first place, the city-manager to see at all times "that the business affairs of the municipal corporation of which he is manager, are transacted in a modern and scientific method, in an efficient and businesslike manner, and that accurate records of all of the business affairs of the city or town under his management, be fully and accurately kept." Further, he is required to submit to "the council an itemized monthly report in writing, showing in detail, the receipts and disbursements, for the preceding month", and such reports after being passed upon by the council are to be published in the newspapers so that the whole community may be kept informed of current municipal happenings. In these two provisions may be found all that there is in the law aiming at efficient business methods in cities.

Of the newer forms of institutional democracy found in the Des Moines plan, the city-manager law of Iowa includes only the referendum on franchises and the protest, the procedure involved being exactly the same as provided for in the commission law. But no provisions are made for the initiative, the recall,<sup>613</sup> or a civil service commission.

As in the commission government plan of Iowa, the city manager law makes provision for the abandonment of the plan after six or more years of operation, in the same way as the plan was adopted.

These two different manager acts, respectively known as the Clarinda plan and the Waterloo plan, constitute the most important municipal legislation enacted by the Thirty-sixth General Assembly of Iowa. Since the legal establishment of these plans in Iowa, only Grinnell has availed itself of the Clarinda plan, and Webster City of the Waterloo plan.

#### THE CITY-MANAGER PLAN IN THE OPTIONAL CHARTER LAWS

Reference has already been made to the optional charter laws passed by the legislatures of Ohio, New York, Massachusetts, and Virginia in the years from 1913 to 1915.<sup>614</sup> In form these laws are general enabling acts, providing a number of optional plans, each of which is applicable to certain cities upon adoption by a local referendum. With the exception of the Ohio model charter law, which is applicable to all the cities and villages of the State, all other laws are limited in their application to certain classes of cities. Massachusetts excludes the city of Boston; New York limits the operation of the law to cities of the second and third classes; while in Virginia cities of over one hundred thousand population can not avail themselves of the advantages of the law.

The Ohio and Virginia laws provide three plans: the commission plan, the city-manager plan, and the federal plan. New York has seven optional forms of charters, which are as follows:—

1. Government by a limited council or commission, with division of administrative duties.
2. Government by a limited council or commission, with collective supervision of administration.



3. Government by a limited council or commission, which shall choose a city-manager.

4. Government by means of separate executive and legislative departments, the latter to consist of three or five councilmen.

5. Government by means of separate executive and legislative departments, the latter to consist of a council of nine members elected at large.

6. Government consisting of a mayor elected at large and a legislative council chosen by wards.

7. Adoption of the law of third class cities by cities of the second class.

The Massachusetts law provides:

1. Government by a mayor and city council of nine members, elected at large.

2. Government by a mayor and city council of from eleven to fifteen members, elected partly at large and partly by districts.

3. The commission form of government.

4. The city-manager plan of government.

The commission plans, as provided in these four optional charter laws, have been analyzed elsewhere in this study; and for the present purpose only the essential points in these laws with reference to the city-manager plan need to be presented.

Being permissive and optional in form, these four charter laws are not self-executing. In order to be effective in any city, the people must, through an initiative petition, start proceedings for the adoption of any one of the forms provided in the laws. In all the States ten percent of the voters of the city may start the movement by petition. The basis for this percentage, however, is not the same in the different States. Ohio requires ten percent of those who voted at the last regular municipal election; New York and Virginia require ten percent of the number of votes cast at the last preceding general election; and Massachusetts takes as the basis the registered voters at the last preceding State election. The petition, after having secured the necessary required number of signatures, is to be filed with the proper authority, which is also different in the different States. In Ohio it is "the board of deputy of state supervisors

of elections or board of deputy of state supervisors and inspectors of election" of the county in which the city is situated; in New York and Massachusetts the city clerk is the proper authority; and in Virginia the circuit court having jurisdiction over the city is specified. In all cases a majority of the votes cast thereon at the election is all that is necessary for the adoption (or rejection) of the proposed plan.

The city-manager plans, provided in these laws, are of practically the same nature, differing only in minor details. In all the laws there is provision for a council as the legislative body of the city, and for an appointed and "controlled" city-manager to be the administrative head of the city government. But the size of the council varies in the different laws. In all except the Massachusetts law, which fixes the number of councilmen at five for all cities, the council varies in size in accordance with the size of the municipality. In Ohio there are five councilmen for cities having not more than ten thousand inhabitants; seven for cities between ten thousand and twenty-five thousand; and nine for cities of twenty-five thousand and upwards. New York provides a mayor and four councilmen for cities of the third class, and a mayor and six councilmen for cities of the second class. Finally, the Virginia law provides for a council of three or five members for cities of ten thousand or under; and of from five to eleven members for cities of ten thousand or over. Councilmen are in all cases elected at large, and have a four-year term in all States except Massachusetts, where the term of office is two years.

It is only in the New York plan that the mayor is elected as such. The Massachusetts law provides that in the election at which the places of three members in the council are filled, the candidate receiving the highest number of votes is declared to be the mayor of the city under the city-manager plan. Both in Ohio and Virginia the mayor is chosen by the council from among its own members at the first regular meeting following the election. The name "mayor" is not found in the Ohio law, the term "chairman" being used instead.

The mayor so chosen or elected is in all cases the official head of the city for the service of civil process and respected as such

for ceremonial purposes. He presides at the meeting of the council, and in New York and Massachusetts he has the same power as other councilmen to vote upon all matters coming before the council.

The administrative and executive powers under these plans are, as usual, vested in an officer known as the city-manager, who is appointed by the council and holds the office during the pleasure of the latter body. The Virginia law specifies that the manager shall hold "office during the pleasure of the council; or for a term of three years unless sooner removed by the council upon proven charges preferred for malfeasance or misfeasance, neglect of duty or incompetency." If after three years the manager proves to be satisfactory, he may be reappointed by the council for a term not exceeding six years, but he is always subject to removal by the council for the above mentioned causes.

Like other city-manager statutes or charters these optional charter laws vest in the city manager all the functions of appointment, of control of employees, and of advice to the commissions. The Ohio law enumerates his powers as follows:

- (a) to see that the laws and ordinances are faithfully executed;
- (b) to attend all meetings of the council at which his attendance may be required by that body;
- (c) to recommend for adoption to the council such measures as he may deem necessary or expedient;
- (d) to appoint all officers and employees in the classified service of the municipality, subject to the provisions of this act and the civil service law;
- (e) to prepare and submit to the council such reports as may be required by that body, or as he may deem advisable to submit;
- (f) to keep the council fully advised of the financial condition of the municipality and its future needs;
- (g) to prepare and submit to the council a tentative budget for the next fiscal year;
- (h) and to perform such other duties as the council may determine by ordinance or resolution.

The New York law gives similar powers to the city-manager, the following being the exact language of the law:

The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions and by-laws of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the

city's financial condition, and its future financial need; (5) prepare and submit to the council a tentative budget for the next fiscal year.

The city-manager in Massachusetts "shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial conditions and its future financial needs; (5) appoint and remove all heads of departments, superintendents and other employees of the city."

The Virginia law empowers the city-manager in the following manner:

The city manager shall (1) see that within the city the laws, ordinances, resolutions and by-laws of the council are faithfully executed; (2) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (3) make reports to the council from time to time upon the affairs of the city; keep the council fully advised of the city's financial condition and its future financial needs; (4) prepare and submit to the council a tentative budget for the next fiscal year; (5) perform such other duties as may be prescribed by the council not in conflict with the foregoing.

From these provisions in the laws with reference to the powers of the city-manager it can readily be seen how closely one State follows another in drawing up statutes of the same kind. Only two explanations seem possible to account for this similarity: either these statutes are drawn very hastily and blindly; or the law of one State is so well worked out that the second State can not draw up a better one on the same subject.

Since the enactment of these optional charter laws, no city in Ohio or Massachusetts has seen fit to adopt the manager plan so provided. But in Ohio, as has already been pointed out, cities enjoy the constitutional right to frame their own charters, and so there is no need to adopt any ready-made plan enacted by the State legislature. It is only in New York that the manager plan of the optional charter law has been adopted by a considerable number of cities. Niagara Falls was the first city to succeed in adopting the plan, on November 3, 1914, by a vote of 2526 to 1068;<sup>616</sup> and was followed by Newburgh on May 1, 1915, by

a vote of 1432 to 1087.<sup>616</sup> Another city in New York which has availed itself of the optional charter law is Watertown, which adopted the manager plan on November 2, 1915, by a vote of 2488 to 2891.<sup>617</sup> But the manager plan in Watertown was not put into effect until January 1, 1918. In Virginia, Portsmouth is the only city that has thus far availed itself of the manager plan as provided in the law of 1915. The plan was adopted in November, 1915, and went into effect in September, 1916.<sup>618</sup>

#### CITY-MANAGERS IN OTHER CITIES

It is evident from the foregoing discussion that there are two distinct types of city-manager now existing in this country. As ordinarily understood, the city-manager plan is "a form of government which combines the ideas of a small representative body, elected at large on a non-partisan ballot, possessing all ultimate legal powers of the city, and subject to certain important checks in the hands of the electorate, with concentration of administrative power in a single individual chosen by the representative body because of expert professional qualifications."<sup>619</sup> This single individual administrative head is known as the city-manager. With few exceptions the cities that have already been discussed in this study have city-managers of this type.

But there are also cities which have created the office of city-manager by ordinance, but without at the same time introducing any change in connection with the old mayor and council form of government. This was what Staunton did in 1908 when for the first time in this country the term "manager" in connection with municipal administration was introduced. There the old mayor and council form of organization was retained and no change was made in the form of government other than the creation by ordinance of the position of city-manager. This plan has since been followed by a number of other cities.

Under the definition of the city-manager plan above cited and in the consideration of the history of the city-manager movement by a number of authorities on the subject, the city-manager under the old mayor-and-council form of government has been entirely ignored. Whether such an attitude is justifiable is open to question; but the fact remains that the general-manager

features introduced by Staunton and followed by other cities has at least some of the advantages often claimed for the city-manager plan—as, for example, the idea of a single administrative head chosen because of professional qualifications. For this reason the original manifestation of the plan in Staunton has been fully treated in this study; and for this reason, also, a consideration of the history of the city-manager movement can not be said to be complete without taking into account those cities, other than Staunton and those already given above, which have provided by ordinance for the position of city-manager without changing their form of government in other respects.

But in taking up this class of cities an obvious difficulty soon appears. As the term “city-manager” has a certain advertising value for the city employing it, many cities have been inclined to confer upon a certain officer the title without at the same time giving to him the real powers pertaining to such a position. It is said that in a certain city in Tennessee where there was an officer known as the city commissioner who had considerable to do with public works, the council passed a resolution which ran substantially as follows:

Whereas it is getting to be the fashion for up to date cities to have city managers, and

Whereas it will make . . . . City look like an up to date city to have a city manager,

Therefore, be it resolved, that the title of the present city commissioner be changed to city manager.<sup>220</sup>

Thus, there are so-called city-managers who are not really managers of cities: the mere conferring of the title of city-manager does not necessarily make such an official a real city-manager. At the same time there is no hard and fast rule to rely upon in deciding whether or not a given official is a real city-manager. There are different degrees of power that are given to the city-managers in different cities. It is, perhaps, for this reason that organizations concerned with city government, like the National Municipal League and the Short Ballot Organization, are justified in including in the list of city-manager cities only those cities having a combination of the commission government and general-manager ideas; for, as Childs says, the other type of city-manager form, “lacking so many of the basic prin-

ciples which are essential to good government in the long run, is very liable to get into trouble from time to time and to give to the true Commission-manager plan and to City managers, an undeserved bad name."<sup>681</sup>

But since the City Managers' Association has defined the city-manager as one who "is the administrative head of a municipality appointed by its legislative body"<sup>682</sup> and has admitted into membership city-managers under the mayor-and-council form of organization as well as those under the true commission-manager plan of government, it seems necessary to include in this consideration of the city-manager movement those non-commission governed cities which have an officer who bears the title of city-manager. Some of the more important cities of this class may now be discussed in order to illustrate more fully the powers and duties of that type of city-manager.

*Virginia.*—By ordinance of the city council, adopted in 1912, Fredericksburg created the office of city commissioner. But under the Constitution of Virginia the police and taxing power, being sovereign powers delegated to the city council, could not be re-delegated to any other agency. Thus, the ordinance creating the new office left all matters relating to the police and taxing power intact in the council; but in other respects the city council acts only as a board of directors in relation to the policies of the city commissioner. The city commissioner is vested with complete authority relating to all administrative affairs other than those of the police department and the levying of taxes. In fact, he is "the supervising, directing, executing, overseeing, buying and spending agent of and for the city." He is required to "look after the heads of the water, sewer, gas, streets and all other departments of the city; to map out plans in all the departments for coördinated work, so that each department would work in conjunction with other departments, and all together work towards one comprehensive plan for the betterment of the whole city."<sup>683</sup>

In exercising his authority and performing his duties the city commissioner is only responsible to the city council as a whole, to which he submits at its regular meetings an itemized statement of all the expenditures during the preceding thirty days, the

estimated expenditures for the following thirty days, and a financial statement with his recommendations in regard to further improvements and developments.

Another city in Virginia governed by a business manager under the mayor-and-council form of municipal organization is Charlottesville. It was due partly to the inefficient and wasteful administration under the unpaid committee system of the old form of government and partly to the example set by Staunton that the city council of Charlottesville passed, in the summer of 1913, an ordinance creating a municipal business manager. This ordinance was to be effective for one year, but in the summer of 1914 it was amended and reenacted.<sup>624</sup> The manager thus created is to be elected at the meeting of the council for a two-year term. He is charged with the duties of an executive and administrative character formerly performed by the several committees of the council—these committees being now required to act only in advisory capacities. Any disagreement between the municipal business manager and the committees is to be referred to and decided by the council. In the quarterly reports the manager is required to set forth an estimate of all the sums of money necessary to carry on the operation of the city in the various departments for the ensuing quarter. At the end of each quarter he is again required to "make a written report to the council of all transactions and operations during the said quarter, including a detailed statement of all bills approved by him showing how and where the various sums were expended during said quarter in order that all disbursements may be related to their objects in the several departments."

*Pennsylvania.*—The city of Titusville, Pennsylvania, which adopted commission government under the Clarke Act, created the office of city-manager by an ordinance passed in December, 1913. The departments of engineering, streets, sewers, water, lighting, and purchasing are thus consolidated and put under the charge of the city-manager. Titusville is one of the first cities in Pennsylvania to adopt this plan of administering city affairs. The city-manager there holds his office at the pleasure of the city council, and draws a salary of \$2100 per annum.<sup>625</sup>



Grove City was the second Pennsylvania city to have a city-manager. Early in the year 1913 Grove City had an epidemic of typhoid fever which was caused by a polluted water supply. As a result the council, in the spring of 1914, passed an ordinance creating the position of manager; and a committee was appointed to secure a man for that position. In Grove City the manager bears the title of "Managing Engineer"—which indicates the fact that much of the engineering work of the city is either performed or supervised by him. His tenure of office is fixed by the ordinance as one year; but he may be reappointed; and he may be removed at any time by the council.<sup>626</sup>

*Massachusetts.*—In Norwood, Massachusetts, there is a town-manager operating under the old form of town-meeting charter. This town-meeting system of New England provides for regular meetings at which the citizens vote upon by-laws and elect the selectmen and other officials. This scheme is very democratic and was workable under the simple conditions of former days, but it is not adapted to the handling of complex problems of a modern city. For this reason the legislature of Massachusetts passed an act in 1915 empowering the selectmen of the town to appoint a town-manager. His tenure of office is not fixed. He is given full power to appoint and discharge superintendents of all departments, as well as to fix salaries and create new departments or disband or combine existing departments.<sup>627</sup>

*Illinois.*—In River Forest, Illinois, the government was formerly in the hands of a president and six trustees, elected at large and serving without pay. With the growth of the city, however, it was found that these officers were unable to give the necessary personal attention to the affairs of the village and so they decided in May, 1913, to employ a city-manager, or general superintendent, whose duty it would be to assume the administrative functions of the village. No change of charter provision was necessary to create the position, as the Illinois statutes provide that at their discretion the president and the board of trustees "may from time to time, by ordinance passed by vote of two-thirds of all the Trustees elected, provide for the appointment by the President, with the approval of the Board, of such

officers as may by said Board be deemed necessary or expedient for the proper administration of the affairs of the village."<sup>288</sup> Thus, on June 9, 1913, an ordinance creating the office of "General Superintendent" was passed, and an appointment was made on the same day. The ordinance requires this new officer to devote all of his time to the service of the village, with general authority and supervision over all other village officers.

Glencoe is another small town in Illinois which created the position of village manager by virtue of a resolution of the city council in January, 1914. After the passage of the resolution Glencoe advertised in a Chicago newspaper for a village manager, and finally selected H. H. Sherer to fill the position. The manager receives a salary of \$2400 per annum.<sup>289</sup>

*California.*—In the spring of 1914 the city of Inglewood, California, passed an ordinance creating the office of city-manager and defining his duties and powers as follows:

1. To see that laws and ordinances of the city are enforced;
2. To exercise control over all the departments of the city and direct the work of all appointive officers;
3. To employ and dismiss all city employees;
4. To superintend the construction of all public work within the said city;
5. To approve or disapprove the requisition for the purchase of any article or articles for the said city by any department or officer before the purchase is made.
6. To attend all the meetings of the Board of Trustees and to recommend to said Board for adoption such measures as he may deem necessary or expedient;
7. To keep the Board of Trustees fully advised as to the financial conditions and needs of the city; and
8. To perform such other duties as may be prescribed by ordinance or resolution of the Board of Trustees.<sup>290</sup>

In exercising these powers the city-manager is subject to the approval and control of the board of trustees, which has full power to correct and set aside any action taken by him. The ordinance further provides that the legal department and the city attorney are expressly excepted from the city-manager's control.

The example set by Inglewood was followed by San Diego, where the office of city-manager was similarly created by an

ordinance on May 3, 1915.<sup>432</sup> Mention may also be made of Alhambra, California, Clark, South Dakota, and Grand Haven, Michigan. In all these cities there are officers called managers. During the legislative session of 1917 the Arkansas legislature passed a commission-manager charter applying to Hot Springs; and the Kansas legislature passed an optional, State-wide commission-manager plan law.

## VII

# QUALIFICATIONS FOR THE POSITION OF CITY-MANAGER

The city-manager plan, like any other form of government, is no miracle in itself. "Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them they are ruined too."<sup>633</sup> There is no such thing as a perfect form of government—municipal, State or national. So long as government must be administered by men the success or failure of a particular form of government, no matter what its form may be, will be largely decided by the kind of men who are entrusted with its administration. The form of government is important only in so far as it facilitates or obstructs them in the performance of their functions. Assuming that the city-manager plan is a good and adequate instrument with which to carry out the work of governing cities, the question still remains, what should be the standard qualifications in the new profession of city-manager? This question is of the utmost importance when one considers how many good measures and how many good laws have fallen into disrepute simply because of administration by the wrong kind of men, or of the lack of specially prepared administrative officials.

In answering the question concerning the requirements for city-manager, one should constantly bear in mind the functions which the city-manager is called upon to perform. It is only from a thorough understanding of the nature of the city-manager's work that a conclusion can be reached as to the necessary and standard qualifications for such a profession. From the analysis of some of the typical city-manager statutes, charters, and ordinances mentioned elsewhere in this study, and from the conclusions of competent authorities, the following are apparently the general powers usually conferred upon that official:

He is charged with the enforcement of laws and ordinances.

He administers the affairs of the departments and is responsible for the results obtained therefrom.

He appoints and dismisses the employees whose work will produce the results he is responsible for.

He advises the council and attends the meetings for that purpose, supplementing his advices with formal written reports, but he has no vote.

He estimates the financial needs of the corporation and acts as expert budget maker and financial advisor of the commission.

He has the general powers of investigation and is the general agent of the commission.<sup>222</sup>

It is evident that the work the city-managers are expected to perform is almost entirely of a scientific and technical character. For instance, the administration of departmental affairs requires high technical and scientific skill similar to that required for the successful conduct of a commercial and business enterprise. Again, the formulation of a tentative budget requires foresight and initiative. Finally, the construction and operation of public works, which are put in charge of the city-manager by many charters, requires the same technical knowledge and skill that is necessary in supervising similar works conducted by private corporations.

Early charter-makers have regarded this last-named phase of the city-manager's work as his most important function; and therefore, it has been specifically set forth in some of the charters that the city-manager shall be a civil engineer. For this reason a large majority of the city-managers have been recruited from the ranks of men trained and experienced in engineering work. But this is a good preparation only in so far as it goes: a knowledge of engineering is only one qualification for the office. The city-manager who is an engineer has the same advantage in this respect as managers with a knowledge of accounting, sanitation, or criminology have in other respects. Rightly understood the city-manager is more than a superintendent of public works. Being the administrative head of the municipal government, he is charged with functions far more important than the performance of special acts of individual application as expressly enumerated in the charter or ordinance.

In the first place, the city-manager is invariably granted powers more or less extensive which affect directly and personally all the officers of the municipal administration. For

instance, he appoints, suspends, or removes any of the officers or employees in the respective departments which may be under his management and control; and in almost all cases he has the power to examine the affairs of any department or the conduct of any officer or employee.

In the second place the power of the city-manager to see that the laws of the State and the charter, ordinances, resolutions, and by-laws of the council are enforced and faithfully executed gives him a somewhat undefined power which may have far reaching consequences in reference to the welfare of the community. This is true because the city statute books in this country contain a large number of ordinances touching matters that concern every phase of the life, liberty, and property of the citizen. "The truth is that no other body of laws interferes with individual freedom of action so much as city ordinances. In the country the law-abiding citizen hardly ever feels the tether of the law. In the city he feels it all the time."<sup>634</sup> Thus the city-manager, charged with the enforcement and faithful execution of the laws and ordinances, becomes the officer upon whose executive ability, common sense, and honesty the welfare of the whole community depends. Questions of law, of justice, of the welfare of the population, of civil administration, and of political management are involved in the actual services demanded of the city-manager.

Viewed from the standpoint of all his functions an engineer with mere technical training would not necessarily make a good city-manager. An engineer may be competent to take care of the physical side of the city; but this is only half of the task of city administration. The other half of administration, far more important and essential than the mere care of the physical plant of the city, is the social or human side, that is, the welfare of the people in their social capacity. To take care of this phase of city administration requires managers possessing more than technical training in engineering work. Mr. Henry M. Waite, city-manager of Dayton, offers some suggestions concerning the necessary qualifications of a city manager when he says:

He [the city manager] should have at least a fair education—sufficient theory, but not too much to spoil the practical side of his make-up. He must be an executive, he must know how to handle men; he must be fair

and just; he must be firm and polite; he must have the courage of his convictions. Any man with these qualifications can be a city manager. Such a man can select the subordinate and advisers to aid him in carrying out the functions of those departments with which he is not familiar. He, as an executive, must get the efficiency from all of his departments through organization.<sup>636</sup>

The qualities indicated by Mr. Waite are of prime importance in the management of large affairs. But the manager of a city requires additional qualifications. The requirement for municipal-managers differs from that for the managers of ordinary business corporations inasmuch as municipal administration has problems that transcend those of business, and the manager should not be held down to commercial standards. While it is possible and profitable to apply business organization and business methods to the municipal corporation, it by no means follows that the government of a municipality is purely a business institution, and that any successful business manager can become a good municipal manager. Private business managers are primarily trained to make profits; while municipal managers have the welfare of the people as their prime object. Municipal administration can never be commercialized without lasting injury to the community; and consequently a municipal manager must be one who has something more than cold and practical business sense. To use the words of Professor Blackmar, the city-manager must be a social engineer.

The city-manager "must know thoroughly the physical structure of the city and how to build it and maintain it, the political and social organization of the city and their administration, and a knowledge of the whole population so that he may care for it, for it is the function of municipal administration to care not only for the physical plant, but for the whole population. And the administrator must know how to manage all of this with efficiency and economy. There must be no waste through practical administration or through the by-products of social activity . . . . [In brief], the city manager must be a social engineer as well as a civil and structural engineer."<sup>636</sup>

## VIII

### SUMMARY AND CONCLUSIONS

All systems of government are expedients of time and place, and so that form is the best which "under the existing conditions of public intelligence, public experience, civic spirit, and common honesty prevailing in each particular city, succeeds best in making the whole body of public authorities, from the chief magistrate to the humblest elector, individually and collectively responsible for the good government of the municipality."<sup>637</sup> It is, therefore, quite impossible to say *a priori* what form of municipal government is the best. It is the results obtained rather than the form of organization which is of prime importance to the people under any political jurisdiction. The form is important only in so far as it facilitates or obstructs the attainment of the results which the people desire. In other words, that form of government is the best which produces the best results.

Applying this test to the American system of municipal government up to the end of the nineteenth century, it is very evident that the form was not such as could produce the best results. Municipal government was a complicated organization which, being made up of a conglomerate mass of unrelated authorities of all degrees of independence, was "characterized by hopeless diffusion and confusion of power and responsibility, legislative as well as executive, among state legislature, council, mayor and well-nigh independent administrative officers and boards."<sup>638</sup>

Indeed, American municipal government during the last quarter of the nineteenth century fell far behind the standard of efficiency that should prevail. Thus, too often the worst men were put in charge of the administration and the best citizens were repelled by the character of the associations prevailing in the city hall. At intervals, however, when mal-administration reached an intolerable point, the suffering community lost patience, and spasmodic movements for reform were aroused.



With a show of indignation and enthusiasm a reform administration was occasionally installed. But time and again those who started the movement very soon realized the impossibility of their task, because they were hopelessly handicapped in their efforts by radical defects in the system of government and numerous adverse influences. Moreover, the people were too busy to keep watch on the government for any long period and too ready to settle back into their ordinary state of apathy. As a result, defeated bosses, corrupt officials, and spoilsmen too often worked their way back into power by pointing out a few of the mistakes and blunders made by the inexperienced reformers. Again, a spirit of sectionalism too often dominated the council of the city; while the system of ward representation operated to encourage the councilmen to "log-roll" extravagant measures and distribute spoils for the gratification of their constituencies and to the injury of the community at large. These were the conditions responsible for the often quoted utterance of James Bryce that "the government of the cities is the one conspicuous failure of the United States."

That American city government at the end of the nineteenth century was poorly organized, badly administered, and corruptly used is too well known to need any further comment on what may be called the extra-municipal stories of different cities, picturesque and potent as these have often been. This "conspicuous failure", however, did not come about by chance. Nor were the defects in the mechanism of the government the only cause for this failure. Various other factors have been pointed out by writers and students of government. For the present purpose, however, only two of these factors need be mentioned.

On the one hand, there is the so-called personal interpretation of politics,<sup>639</sup> which attributes failure in municipal government to defects in the character of the people and which specifies the charges as follows: (1) the levity of the national character; (2) the lack of public spirit; (3) the vileness of local politicians; (4) the spirit of commercialism; and (5) the natural outcome of democracy.<sup>640</sup> One writer even goes so far as to say that "the people are not very good, and in many cases they do not want very good government. At best they want good government only now and then. The citizens of our cities would be very glad

to get something for nothing. They would be glad to have a government that would be good to them as individuals and that would cost them nothing of time or effort or money."<sup>61</sup>

The other interpretation, which has already been suggested and which since the beginning of the present century seems more widely accepted, is the institutional view; it asserts that the personal interpretation is entirely inadequate as an explanation of the phenomena, and that the chief difficulty lies in the character of the institutions. Cities are what they are because of obstacles which would make it difficult for any people to be well governed.<sup>62</sup> Professor Ford of Princeton, after an exhaustive examination into the various hypotheses that have been put forward to account for the failure of American city government, sums up this view in the following language:

The bad operation of American municipal government is not due to defect of popular character, but to defect in organization of government. The organic defect lies in the fact that the executive and legislative departments, in addition to being separately constituted, are also disconnected, and this very disconnection has prevented in practice the degree of separation in their functions which their integrity requires, a consequence precisely what Madison predicted if separate powers are not duly connected in their operation. The remedy is therefore to be found in establishing a proper connection between the executive and legislative organs of government, so as to make the functions of administration and control coextensive.<sup>63</sup>

The view thus expressed by Professor Ford has been the prevailing view of the general public during the last decade; and the movement for the commission form of government and the commission-manager plan is a striking manifestation of the popular conviction that "failures in administration and leakages in the public treasury are due more often to inefficient organization and antiquated methods than to official dishonesty."<sup>64</sup>

But the commission form of city government, or the commission-manager plan, was not consciously devised to solve the problem of municipal government: it was a chance creation of politics. Prior to the twentieth century, city government by appointed commissions had been of frequent occurrence, but government by elected commissions was almost unknown. In 1894 when the National Municipal League was formally organized in New York City municipal reformers did not even

dream of that form of city government; and in the municipal program formulated and adopted by that body in 1899<sup>645</sup> it declared itself in favor of what was then considered as the best type of city government: the federal plan as exemplified in the charter of Brooklyn and the charter of Philadelphia. Indeed, the movement for the concentration of power in the hands of the mayor at that time was so sweeping that one writer even voiced his fear of the possibility that it would degenerate into a "fad".<sup>646</sup>

Ever since the last quarter of the nineteenth century, the problem of municipal government has been constantly before the minds of public-spirited citizens as one which must be solved, and a great deal of active interest has been taken in the subject. The importance of the form of government has been recognized, and modification of the city charter has since become the favored remedy, the purpose being to center greater responsibility and power in a few hands. Good government clubs, municipal leagues, and local improvement societies have been organized everywhere. City after city has demanded a reform charter, in the hope that the evils of irresponsible and inefficient government might thereby be reduced in some measure. Everywhere the reform movement of the period has this characteristic feature: the concentration of power and responsibility in the hands of the mayor.

In view of the diffused responsibility characterizing the system of American city government previous to this period the policy then adopted by the municipal reformers represented a natural reaction. The remedy suggested and looked for was logically the abolition of the old system which "provided a separate and independent board or officer for each of the city departments, and gave the council the means of doing mischief with very little opportunity for doing anything good."<sup>647</sup> By concentrating authority and executive power in the hands of the mayor it was hoped that popular attention could be easily fixed upon one man instead of being distributed among scores of independent departmental heads, and consequently greater amenability to popular control would be possible than otherwise could be secured.<sup>648</sup> But the idea of radically departing from the

traditional concepts with reference to city government and of putting the municipal government entirely in the hands of a commission of a few men, except in cases of emergency, was never suggested by municipal reformers of the nineteenth century.

It was not until 1901, after the Galveston flood, that elected commissioners made their appearance in the municipal history of the country. But even then this new form was not regarded as affording a new frame of city government which could be extended to, and adopted by, cities throughout the country. It was only after wonderful results were reported to have been accomplished in Galveston under the new form and after the inception of the Des Moines plan with all the popular forms of institutional democracy, that the commission form of city government became widely popular. City after city has followed the example of Galveston and Des Moines, until at the present time there are over four hundred cities throughout the country operating under one type or another of the commission form of government.

With few exceptions cities operating under this new form of government are claimed to have accomplished results deemed impossible under the old plan: politics have been eliminated, ward lines abolished, authority centralized, responsibility fixed, and efficient methods employed. These are simply a few of the many beneficial results claimed for the new plan.<sup>640</sup> Numerous articles, pamphlets, and books on the commission form of city government have been written, and in most of them undue emphasis has been put on the activities along the line of works in municipal improvement, the lowering of tax rates, and the like. By some advocates the relation of cause and effect has been accepted as conclusively proved, the commission form being the main cause and municipal improvements or lower tax rates the effect of the city betterment movement. To others who are not so enthusiastic about the new form of government as are its ardent advocates, the adoption of a new form of charter has been one of the effects and not the cause of an awakened civic spirit. "Every new plan works well for a time, because the movement for reform from which it springs brings good men to the front

and places power in their hands. The real test comes in later years when the momentum is exhausted, and the moral enthusiasm of the dawn has faded into the light of common day.''<sup>650</sup>

Recently the number of cities adopting the commission form has been very small. / With the advent of the city-manager plan the ~~commission~~ form has been regarded as relatively antiquated. The early enthusiasm has cooled, and public interest in the novelty of the plan has been diverted to a still newer form of government. So far as the commission form is concerned at the present time, the momentum is apparently exhausted. Moreover, important departures from the orthodox type of the city-manager plan, such as the increase in the number of commissioners, and the incorporation of the systems of preferential voting and proportional representation, have been adopted and practiced in some cities. Indeed, American cities show little hesitation in making important changes in their efforts to secure better adjustments.

While there may be objection to such apparent vacillation on the ground that it may subject municipal reformers to the suspicion of not knowing their own minds,<sup>651</sup> it is believed to be the most hopeful feature of current American politics. The people acknowledge their failure in city government, and they are earnestly seeking remedies. But from the very nature of the problem it is difficult for municipal reformers to decide for themselves or make clear to the public in general what these remedies should be; nor is it possible for them to agree on any single scheme. It is not improbable that the commission form and city-manager plan are not the last and permanent form of American city government. A great many plans and forms must be tried and tested before the final word can be said: the fittest form will survive after years of experimental selection.

With the number of cities<sup>652</sup> aggregating about three thousand and with the people always on the lookout for political innovations, America offers the best field in the world for municipal experimentation. Small governmental areas like cities are, by their very nature, fit places in which to try innovations in the machinery of government. To experiment with Congress would be to jeopardize the whole nation; to experiment with the State

legislature would be to subject the entire Commonwealth to uncertainty; but experiments in municipal government affect only a small fraction of the people and the actual situation is not aggravated. At the same time, successful experiments in reform may extend from city to city and may even proceed to State and national adoption. This is a hopeful feature of American politics.

Turning now to the actual accomplishments under the commission form and the city-manager plan, it is evident that temporary improvements have been followed by a change to the new form in most cases; and in certain cities permanent improvements have resulted from doing away with the anomalies and complexities of earlier charters. But the actual success of the new plans can not be definitely and easily ascertained. To attempt a general survey of municipal administration under the new forms compared with that under the old plan is hardly possible because of the inadequate data available for such a study. Municipal conditions existing prior to the adoption of the new form can not be compared with those existing after the adoption, since the standards in accordance with which the records are kept are different under the two régimes. The reorganization of departments, and the greatly altered methods of municipal bookkeeping which have come into being with the new framework of government make it very difficult to determine to what extent any city has gained in its passage from the old régime to the new. And the published claims of the achievements in different cities made under the new plan of government have almost without exception emanated from the officials in charge; and to attempt a general verification of these claims would have required prohibitively costly and extensive investigation.

An accurate estimate of the actual success of the commission form or the commission-manager plan is rendered still more difficult by the fact that it is well-nigh impossible to disentangle the improvements under the new form coming from the mere change of governmental organization from those resulting from the awakening of civic consciousness. In pointing out the results which have come from the commission form or the commission-manager plan, the advocates usually fail to take any account

of the growth of public sentiment demanding better government and compelling the choice of better men. Since government is carried on not by charters or laws, but by men, upon the governing body depends the success or the failure of the plan. Any account of the successful operation of the new plan without taking into consideration the men, from the magistrate to the humblest electors, who carry on and direct the machinery of government, is certainly worth very little.

While officials may be handicapped by an ill-drafted and unworkable system, an excellent system may also be manipulated by corrupt officials. Thus, despite the large group of municipal reformers who maintain that given a proper charter everything else will take care of itself—methods, men, and results—it is still the concensus of opinion among the authorities and publicists that man, if not more important, is at least of as much importance as the system. Judge Dillon maintained that “no municipal constitution and no municipal mechanism will necessarily insure good municipal government. Whether the essential powers of a municipality, as in England, are in an elective council, which elects its mayor and appoints its standing committees which oversee the various administrative departments, or, as in New York, where the substantial powers are in an autocratic mayor and in elective commissioners, and where the authority of the legislative branch is so curtailed as to leave that body almost a phantom, it depends almost wholly upon something else than forms of organization whether there will result good municipal rule. That indispensable something else is what may be called Civic Patriotism.”<sup>663</sup>

“The cultivation and practice of civic patriotism”, he continued, “are therefore among the chiefest duties of American citizenship. By civic patriotism is meant the feeling and the taking of a deep, unselfish, earnest, ever-wakeful, active interest in the affairs of one’s own city or local community, regarding it as having an automony, a distinct personality, a name and interests of its own, and, if one pleases, endowed with a sense of personal honor and with all laudable ambitions for the promotion of the welfare of its people. Where such civic virtues exist, the local community will neither suffer from the dry-rot

of public indifference and neglect nor become tainted with 'graft' or corruption. Its life will be beautiful, and like the ocean will be kept pure by its own ceaseless flow and movement.'"<sup>684</sup>

To the same effect are the words of Professor Taussig of Harvard, who uses the following significant and forcible language:

We in the United States have still to learn how to get common honesty and faithful routine. Antiquated political institutions, excess of elected officials, lack of concentrated responsibility,—all these explain a good deal, and improvement in these matters of political machinery promises a good deal. But at bottom we have to depend on the stuff of the people. A good electorate will choose honest and capable officials, a debased or indifferent one will tolerate demagogues and thieves. The traditional method of committee administration and scattered responsibility has often been held accountable for the evils of municipal government in the United States. No doubt it has had ill effects. But it is striking that a very similar system in Great Britain has not stood in the way of honest and efficient administration. Reform in the machinery of municipal government will avail little unless the right persons are chosen to run the machinery. From this elemental requisite there is no escape."<sup>685</sup>

The mere fact that the commission plan and the city-manager plan have been established in over four hundred cities within the last decade is a clear indication of the so-called awakened civic patriotism. The character of government is nothing but a reflection of the intelligence of the voters and the amount of interest which is felt by them in public affairs. In case there is lack of such intelligence and interest on the part of the voters, the dishonesty and ignorance which will be manifested in the conduct of public affairs can not be lessened by any means. Legislation is powerless and ineffective in such a case, and the defects and abuses in the government can never be reformed unless the people on the whole have intelligence and an interest in participating in governmental affairs. It will make but little difference what may be the laws governing the terms of office, or the methods of selecting the officials, or the powers vested in this or that official, so long as the people themselves are satisfied to be governed by ignorant and dishonest officials. It is only when there is an "awakened, vitalized and actively operating public opinion" that the mechanism or system of government has any bearing on the administrative results. Professor McBain of Columbia has this idea in mind when he says:



I am inclined to believe that had the commission or the city-manager type of government been established a generation or so ago it would have been a dismal failure. In an atmosphere of public indifference, of inactivity, of lack of heart or of interest, it would have lent itself admirably to the machinations of professional politicians and spoilsmen. We should hesitate to give to the genius of a designer credit that is in fact due to a new motive force—in this case to an awakened, vitalized, and actively operating public opinion.<sup>66</sup>

Assuming the reasoning in the above quotation to be correct and that the spread of the commission plan and the city-manager plan was due to the awakening of civic consciousness, the next logical inquiry is concerning the extent to which the new system has facilitated the realization of the best possible government. The sponsors of the commission plan declare that the advantages of that plan are: (1) that it concentrates responsibility; (2) that it makes business methods possible in city administration; (3) that it reduces administrative friction and delay; and (4) that it improves the quality of municipal officers.<sup>67</sup>

Again people were assured when the city-manager plan came into existence that this scheme would secure, in addition to the benefits possible under the commission plan, two other important advantages, that is, administration by experts and separation of the policy-determining function from that of policy-executing. It is worth while, then, to determine to what extent these various claims have been sustained in the actual operation of the new plans.

The first of these advantages is said to be the concentration of responsibility. "What modern municipalities need, especially in America, is a régime in which, without hesitation, without study, without lawyers' or experts' opinions, the humblest laborer can tell who is responsible for any defect he may discover in the police of the streets, in the education of his children, or in the use and mode of taxation."<sup>68</sup> That such a régime has been secured under the commission form is beyond doubt. Instead of "that intolerable scattering of powers, duties, and responsibilities which the old type of city government promoted to the point of absurdity"<sup>69</sup> there is under the commission plan "conspicuous responsibility and hence accountability of all elective officials to the people." This conspicuous responsibility

is recognized as resting on a single authority—the commission or council as the case may be; and experience has shown that the people of a municipality are better able to select and to hold responsible one ruling authority than several.

As a corollary to this claim it is asserted that there would be less administrative friction and delay under a commission of five members than under a larger body. "The history of large councils is in general little more than a record of political maneuvering and frictional intrigue, with a mastery of nothing but the art of wasting time and money. A council of some half-dozen men offers at least the possibility of despatch in the handling of city affairs; for its small size removes an incentive to fruitless debate, and affords little opportunity for resort to those subterfuges in procedure which serve mainly to create needless friction and delay."<sup>600</sup>

But the case is entirely different with the claim that the commission plan means the introduction of business methods into city administration. On the whole, the commission form of government has failed in this respect. To be sure, efficient internal administration is something which "no charter can assure, though it can do much, if its administrative provisions are properly framed, to make good results possible. To establish an elective commission or a city manager is not in itself enough to guarantee that the city's business will be conducted properly, although many persons seem to have imagined so."<sup>601</sup> Efficient city government depends as much on a simplified organization as on proper administrative machinery; but the introduction of a simplified organization does not necessarily involve the automatic introduction of efficient, business-like administrative methods. On the contrary, most commission charters and statutes are especially weak and defective in the sections relating to administrative matters.<sup>602</sup> In some extreme cases the commission charter even follows literally the old charter which it superseded, with the single exception that it reduces the number of council members and makes them heads of administrative departments, elected at large. The charter of New Orleans is a conspicuous example of this class.<sup>603</sup>

As a rule, most commission charters and statutes are concerned more with the political than with the administrative side of the city government. From the analysis of these charters and statutes it is evident that the framers bestowed much care upon such provisions as the methods of nomination, the primary election, the forms of ballot, the number of commissioners and the assignment of functions among them, direct legislation and the recall; but scanty attention is given to the various detailed provisions which would be instrumental in bringing the business methods of the city up to the level of those of the best private business corporations. Provisions for scientific budget-making, modern methods of accounting and reporting, of purchasing and storekeeping, and scores of other matters, which are of imperative consequence in creating efficient city administration, find scanty attention or no place in these new charters—with the exception of those of Dayton and a few other cities. It seems rather strange and contradictory that when the sponsors of the commission plan declared that the commission form was avowedly patterned on the organization of private business concerns, and that the introduction of this system meant the introduction of modern business methods, the framers of charters failed to avail themselves of the established methods which are in operation in any private business establishment.

To be sure, it is possible to introduce business methods under the commission form; but they are no more and no less possible under the commission form than under any other type of organization. The inadequate provisions dealing with administrative details in the commission charters and statutes is certainly the chief defect which accounts for the failure in some cities where the plan is tried. On the other hand, cities having availed themselves of efficient business methods, but which are still under the old council-and-mayor plan or the federal plan of government, have achieved far better results than in most of the commission-governed cities. The administration in New York City, as a result of the establishment of the municipal research bureau and the introduction of various up-to-date administrative methods, has improved during the past decade to an extent excelling the achievements in all the commission-governed cities com-

bined;<sup>664</sup> and the results in other cities where efficient business methods have been introduced are equally significant. Thus, as Professor Munro says, "if essentials are looked after, the exact type of charter does not matter."<sup>665</sup>

Concentration of authority and responsibility and the introduction of efficient business methods, important as these features may be, become less significant when the personal equation in municipal employment is considered. As has already been pointed out, government is carried on not by charters or laws, but by men; therefore, the inquiry as to whether the new system attracts more competent and better men than the old system becomes very important. At the very outset when the agitation for the adoption of the commission form took definite shape, the sponsors of the plan strongly and unequivocally assured the public that the new plan would attract better men. It was asserted that "the distinction which attaches to the commissioner's office, together with the consciousness that due credit for individual achievement will not be unnoticed, gives to the position an attractiveness which is all the more effective because allegiance to the ward machine is not necessary to obtain it."<sup>666</sup> This sounds very reasonable in theory, but is not sustained by the actual experience of the commission-governed cities.

An examination of the make-up of the commissions will reveal the fact that in many cases a majority of the commissioners are either of the old type of councillors, or are men who held some sort of office under the old régime. Professor Munro has examined the make-up of ten commissions or the record of fifty commissioners, and has found that thirty-seven of these fifty, or seventy percent of the new officials, have had connection of one sort or another with the city administration under the old plan.<sup>667</sup> Again, Professor Shambaugh made the following significant statement with reference to the working of the Des Moines plan in Iowa:

Perhaps the greatest disappointment in the workings of the Des Moines Plan in Iowa is in the selection of the members of the Council, for it is a fact that the elections have not resulted in the selection of really capable and efficient men. To be sure the commission councils have thus far seemed to average higher and better all around than the councils under the old organizations; but the new plan by placing greater responsibility upon

the elective officers requires a correspondingly higher grade of competency. To the observer it would appear that neither the electorate nor the council are sufficiently impressed with the great necessity of efficiency in the selection of men for public positions. Nor has the best talent thus far been attracted to the elective positions.<sup>222</sup>

These statements indicate that the introduction of the new plan does not bring about a material change in the personnel of the government. But at the same time it should not be forgotten that, thanks to the simplification of governmental machinery and the concentration of authority and responsibility, the same type of men can achieve better results under the new plan than under the old régime, where the officials were hopelessly handicapped by various checks and balances.

On the whole, it may be safely said that the commission plan has achieved something, mainly along the line of securing governmental machinery which the people can understand and of concentrating authority and responsibility in a few persons whom the people can put their hands on when anything goes wrong in the government.

Turning now to the city-manager plan it will be observed that it attempts to interfere with or alter none of the legal or political characteristics of the commission plan. What this newer innovation attempts is to carry to its logical conclusion the idea of centralization which the commission system has laid down. The commission form has given the people a simplified, centralized form of government, so far as it goes. But it has failed to apply the idea of centralization to administration, and consequently administrative friction and delay, though greatly reduced, is not completely eliminated under this form of five-headed government. Furthermore, the commission form has been rightly objected to in various quarters because of the danger of concentrating in the hands of the same body the power of both making the ordinances and executing them; and of imposing taxes, appropriating money, and making expenditures.

As a remedy for these shortcomings in the commission plan, steps have been taken in a number of cities to adopt the city-manager plan, which attempts to separate the function of representation or policy-determining from the pure administrative or policy-executing function, not by a return to the old system

of separation of power, but by retaining the unity of power in the hands of a small representative body which carries out its orders through a strong, unified, harmonious administrative organization under an appointed and controlled but expert manager. Thus, it is claimed that the advantages of this new plan, in addition to those secured under the commission form, are the separation of policy-determining and policy-executing functions and the introduction of expert administration.

In any political action there must be first the formulation of the will, and then the execution of the will thus formulated. As President Goodnow well states: "The will of the state or sovereign must be made up and formulated before political action can be had. The will of the state or sovereign must be executed, after it has been formulated, if that will is to result in governmental action."<sup>669</sup> These functions of formulating and executing the will are respectively known as policy-determining and policy-executing, or legislation and execution, or more properly, administration. Now, this principle formulated with special reference to national or State governments, or rather to government in general, is equally applicable to the government of the city. But it often happens that prominent writers, after an examination of the activities of municipal authorities, come to the conclusion that the work of governing a city involves but little true legislation. They claim, on the other hand, that it is primarily administration. A no less distinguished scholar and authority than Charles W. Eliot, President Emeritus of Harvard University, says: "Municipal government is pure business and nothing else—absolutely nothing else."<sup>670</sup> This has been the idea upon which the commission government movement has been based.

But it does not take long to convince students of government and municipal reformers that municipal government is something more than business. The questions that touch the people oftenest and closest in their personal relations are questions of municipal government;<sup>671</sup> and city ordinances interfere more with individual freedom and action than any other body of laws. Thus municipal government is government in just the same sense that State government is government. Such being the

case, there must be in municipal government as well as in State government two separate and different functions.

Not only are the two functions of an entirely different nature, but the performance of these two functions, due to the complexity of political organization, must be entrusted to two separate governmental organs. But in actual operation, these two separately constituted governmental organs carrying two different functions, legislation and administration, can not be disconnected as under the old system of city government, in which the disconnection between the legislative and executive departments prevented the proper separation and coördination of their functions. "No political organization, based on the general theory of a differentiation of governmental functions, has ever been established which assigns the function of expressing the will of the state exclusively to any one of the organs for which it makes provision."<sup>673</sup>

Legislation and administration, due to the very nature of these functions, can hardly be differentiated. If legislation is defined as "the laying down of general principles and rules of conduct", and administration as "their application to specific cases", there is practically no line of demarcation between the general and specific.<sup>673</sup> The legislative body may enact the ordinances in a general and broad way and leave it to the executive body to work out the details; or it may choose to lay down the law in such specific and minute details that the administrative agency has no discretionary power whatever. Both experience and theory show that it is impossible to mark off rigidly the respective sphere of action, and to make the one body independent of the other. Mr. Durand has well said:

In the decision of most municipal questions sound business judgment and deliberation and technical training and knowledge are all alike desirable. Harmonious coöperation between legislative and executive is shown by the success of the cabinet system to be highly advantageous in promoting efficiency of national government, and it is still more useful in the city. The German city organization shows us what can be accomplished by such a union.<sup>674</sup>

Now, the city-manager plan has for its basic principle this harmonious coöperation between the legislative and executive branch of government. Under it there is a close union rather

than a separation of these two authorities. The council or commission, that is, the legislative branch of the government is made supreme; it chooses and controls the executive—the manager—while at the same time seeking his advice and leadership. The council holds the manager responsible for the details of administrative work; and the people hold the council responsible for the results of the entire administration. The policy-determining and policy-executing authorities are separately constituted, but they are connected by subordinating the policy-executing authority to the policy-determining.

This very subordination of the city-manager to the commission has led one prominent writer on the subject to declare that the city-manager plan does not of necessity involve a separation of policy-determining and policy-executing functions, nor does it of necessity result in administration by experts. According to this writer the "degree of separation and the degree of expertness that result must be ascribed not to anything that inheres in the form of government but to the practice under that form as it has developed under the compelling force of enlightened public opinion."<sup>107</sup> This line of reasoning is warranted by the experience of some cities, and is especially significant when it comes from the pen of such an authority as Professor Howard L. McBain.

The same writer further asserts that the commission plan and the city-manager plan, while differing in the respects already noted, resemble each other because in the last analysis the commission or council is the government in both cases. In the city-manager plan the council or commission which has the ultimate power of decision is composed not of professional experts, but of ordinary members of society at large. Business men, manufacturers, and persons in various walks of life may be members of the council, provided they are chosen by the electorate. Acting together in the council, they decide the affairs of the city. They may listen to and follow the advice of the city-manager who is an expert, but it is they who actually decide; and further, by controlling the tenure of the manager, they may actually control the administration.



To be sure, any kind of government, no matter how perfect it is in form, depends for its success upon the capacity and loyalty of those who have a part in the work of governing. In a city that elects machine-controlled political puppets to office any form of government will break down in actual operation, to say nothing about the experimental commission or city-manager plans. Again, the character of the governing body depends on the character of the electorate. A corrupt and ignorant electorate can never elect honest and competent officials. Thus, the first requisite of any reform movement is the public spirit, intelligence, and independence of the voters. The very movement for the commission plan and the city-manager plan can indicate nothing but a change of attitude on the part of the general public towards municipal questions, which is a very hopeful sign. While reforms in the mechanism of government do not necessarily create public spirit, intelligence, and independence in the voters, they have given these qualities an advantage which they have never before possessed. From this point of view, high commendation of the virtues of the commission plan and the city-manager plan is justifiable as a "means for keeping public opinion upon its mettle"; but in so doing, care must be taken that such laudation may not result "in convincing a busy and not exacting people that here at last, after all the futile searching of the years, they have come upon their long sought El Dorado—a super-government, a government so perfect in type that they can wind it up at periodical elections and, with supreme confidence in its ability to run itself, turn their attention to other things".<sup>676</sup>

# NOTES AND REFERENCES

## CHAPTER I

- 1 Toulmin's *The City Manager*, p. 6.
- 2 Sparks's *The Business of Government: Municipal*, p. 1. Mr. Edward A. Fitzpatrick, in a short article entitled *What is Civic Education?*, remarked that "from every standpoint of life and of our education the city is the fundamental phase of government. It is a phase of government with which every individual comes in direct contact. It is the only phase of government in which civic education can be said to deal with the community life. The state is not a community, nor is the nation in any genuine sense of these terms. The state or nation are merely more or less artificial things compared to the city. *They are merely the over-head charges of the city government.*"—*National Municipal Review*, Vol. V, p. 278.
- 3 Cited in Woodruff's *Charter-making in America* in the *Atlantic Monthly*, Vol. 103, p. 638.
- 4 Wilcox's *The Study of City Government*, p. 236.
- 5 Shaw's *The American State Legislatures* in the *Contemporary Review*, Vol. 56, p. 555.
- 6 Bryce's *American Commonwealth* (1915), Vol. I, p. 2.
- 7 Horack's *Reorganization of State Government in Iowa* in the *Iowa Applied History Series*, Vol. II, p. 7.
- 8 Ryan's *Municipal Freedom*, pp. 152-153.
- 9 See President Lowell's *Introduction to Ryan's Municipal Freedom*.
- 10 Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 10201.
- 11 MacGregor's *City Government by Commission*, p. 10. This monograph was published as *Bulletin of the University of Wisconsin*, No. 423.
- 12 MacGregor's *City Government by Commission*, p. 10.
- 13 White's *State Boards and Commissions in the Political Science Quarterly*, Vol. 18, pp. 645, 646.
- 14 Woodruff's *City Government by Commission*, p. 12.
- 15 Bradford's *History and Underlying Principles of Commission Government in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 680. Compare Beard's *American Government and Politics* (1914), pp. 598 ff; Munro's *The Government of American Cities*, pp. 294 ff; Munro's *Commission System of City Government* in McLaughlin and Hart's *Cyclopedia of American Government*, Vol. I, p. 344; Deming's *The Government of American Cities*, p. 97; Kale's *Unpopular Government in the United States*, pp. 139 ff; Childs's *Short Ballot Principles*, pp. 63 ff; Pollock and Morgan's *Modern Cities*, pp. 183 ff; Good-

now's *Municipal Government*, pp. 175-178; *Report of the National Municipal League's Committee on the Commission Form of Government* published in the *National Municipal Review*, Vol. I, pp. 40-44; Matthews's *Municipal Charters*, pp. 17, 18; James's *Applied City Government*, pp. 45-51; Zueblin's *American Municipal Progress*, pp. 383-385; Eliot's *City Government by Commission in the World's Work*, Vol. XIV, pp. 9419 ff; Ryan's *Commission Government Described* in Woodruff's *City Government by Commission*, pp. 64-88; Croly's *Progressive Democracy*, pp. 286, 287.

16 Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 10201.

17 Considered as non-essential in the report of the National Municipal League's Committee in the *National Municipal Review*, Vol. I, pp. 41, 42; as non-essential, except with regard to election-at-large, by MacGregor in his *City Government by Commission*, pp. 29-31; and as essential in Ryan's *Municipal Freedom*, p. 24, and by almost all other writers. Matthews has a particular aversion to the initiative, referendum, and recall. He says: "These features, found in most commission charters as well as in some others, are, in the writer's view, not only inconsistent with democracy as originated and hitherto practiced in this country, but are inherently incapable of application to municipal administration".—Matthews's *Municipal Charters*, p. 18.

18 Munro's *The Government of American Cities*, p. 191.

19 Munro's *The Government of American Cities*, p. 192.

20 Munro's *The Government of European Cities*, p. 235.

21 Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 10203.

22 MacGregor's *City Government by Commission*, p. 26.

23 Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 10203.

24 James's *The City Manager Plan, the Latest in American City Government* in *The American Political Science Review*, Vol. VIII, p. 612.

25 *National Municipal Review*, Vol. I, p. 41.

26 *National Municipal Review*, Vol. I, p. 41.

27 Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 10201.

28 Goodnow's *Principles of Administrative Law of the United States*, p. 3.

29 For instance, in *The Des Moines Capital*, January 6, 1917, there is a headline entitled "Mayor probes actions of the city police". Instances of this kind, which were of frequent occurrence in other cities and in Des Moines during the previous period, clearly indicate the fact that under the commission form administrative centralization is still lacking and that conflicts among the commissioners are unavoidable.

30 James's *The City Manager Plan, the Latest in American City Government* in *The American Political Science Review*, Vol. VIII, p. 608.

31 Wilcox's *The Study of City Government*, p. 230.

32 The arguments for and against election to specific office and election at random are well stated in Johnson's *Commission Government for Cities: Election to Specific Office vs. Election at Random* in the *National Municipal Review*, Vol. II, pp. 661-664.

- 33 *National Municipal Review*, Vol. III, p. 46.
- 34 *National Municipal Review*, Vol. III, p. 45. Compare also *Definition of the "City Manager Plan"* in Beard's *Loose Leaf Digest of Short Ballot Charters*, pp. 10203, 10204; Childs's *The Principles Underlying the City-Manager Plan in The Annals of the American Academy of Political and Social Science: Commission Government and the City-Manager Plan*, (Revised edition, 1914) pp. 171 ff; James's *Applied City Government*, pp. 62 ff; James's *The City Manager Plan, the Latest in American City Government*, in *The American Political Science Review*, Vol. VIII, p. 604; Matthews's *Municipal Charters*, p. 41, note; Zueblin's *American Municipal Progress*, p. 386.
- 35 Toulmin's *The City Manager*, p. 76.
- 36 Childs's *Controlled Executive Plan in the National Municipal Review*, Vol. II, pp. 76-81. Zueblin gives the following significant definition of the city-manager which may be cited in this connection: "The city manager is the paradox of an all-powerful executive absolutely subordinate to the council".—Zueblin's *American Municipal Progress*, p. 386.

## CHAPTER II

- 37 Fairlie's *Essays in Municipal Administration*, p. 48.
- 38 *Documentary History of New York*, Vol. I, p. 389.
- 39 Matthews's *City Government of Boston*, p. 166.
- 40 Stubbs's *Constitutional History of England*, Vol. 3, p. 577.
- 41 Fairlie's *Essays in Municipal Administration*, pp. 49, 50.
- 42 List of colonial boroughs as given by Fairlie in his *Essays in Municipal Administration*, p. 50, note.
- Agamenticus, Maine, chartered 1641.
- Kittery, Maine, chartered 1647.
- New York, New York, chartered 1686.
- Albany, New York, chartered 1686.
- Germantown, Pennsylvania, chartered 1687.
- Philadelphia, Pennsylvania, chartered 1691.
- Chester, Pennsylvania, chartered 1701.
- Westchester, New York, chartered 170(?)
- Bath, North Carolina, chartered 1705.
- Annapolis, Maryland, chartered 1708.
- Perth Amboy, New Jersey, chartered 1718.
- Bristol, Pennsylvania, chartered 1720.
- Williamsburg, Virginia, chartered 1722.
- New Brunswick, New Jersey, chartered 1730.
- Burlington, New Jersey, chartered 1733.
- Norfolk, Virginia, chartered 1736.
- Richmond, Virginia, chartered 1742.
- Elizabeth, New Jersey, chartered 1740.
- Lancaster, Pennsylvania, chartered 1742.
- Trenton, New Jersey, chartered 1746.

43 Rogers's *Municipal Corporations in Two Centuries' Growth of American Law* (Yale Bicentennial Publications), p. 218.

44 Fairlie's *Municipal Administration*, p. 73. In England, the controlling power over corporations was virtually vested in "select bodies", and the abuses arising out of this system continued after the revolution in 1688, and until the passage of the act of Parliament in 1835.—See Dillon's *Commentaries on the Law of Municipal Corporations*, Vol. I, p. 20.

45 Fairlie's *Municipal Administration*, p. 73.

46 Fairlie's *Municipal Administration*, p. 74.

47 Fairlie's *Essays in Municipal Administration*, pp. 76, 77.

48 Fairlie's *Essays in Municipal Administration*, p. 77.

49 Fairlie's *Municipal Administration*, p. 75.

50 Fairlie's *Municipal Administration*, p. 76.

51 Goodnow's *Municipal Government*, p. 176.

52 Munro's *The Galveston Plan of City Government in the Proceedings of the Providence Conference for Good City Government*, 1907, p. 144.

53 Fairlie's *Municipal Administration*, p. 78.

54 Munro's *The Government of American Cities*, p. 5.

55 Allison and Penrose's *The City Government of Philadelphia*, in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. V, p. 33.

56 Fairlie's *Municipal Administration*, pp. 78, 79.

57 Munro's *The Government of American Cities*, p. 6.

58 McClain's *Constitutional Law in the United States*, p. 63.

59 Allison and Penrose's *The City Government of Philadelphia* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. V, p. 34.

60 Greenlaw's *Office of Mayor in the United States in Municipal Affairs*, Vol. III, p. 39.

61 Hollander's *The Finances of Baltimore*, p. 52.

62 Fairlie's *Municipal Administration*, p. 79.

63 Howe's *Municipal History of New Orleans* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. VII, p. 14.

64 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, pp. 411, 412.

65 Goodnow's *Municipal Problems*, p. 17.

66 Greenlaw's *Office of Mayor in the United States in Municipal Affairs*, Vol. III, p. 35.

67 Matthews's *The City Government of Boston*, pp. 164, 165.

68 Snow's *The City Government of St. Louis* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. V, p. 143.

69 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, p. 414.

70 Durand's *The Finances of New York City*, p. 41.

71 Address of the convention of 1829, cited in Durand's *The Finances of New York City*, p. 42.

72 Greenlaw's *Office of Mayor in the United States in Municipal Affairs*, Vol. III, p. 38.

73 The distribution of these municipalities was as follows: "Nine of these were in New England, where the development of manufacturing centres had increased population beyond the capacity of the town-meeting; five were in New York State; the same number in Ohio, four in Illinois; and almost every state was represented by one or two cities."—Fairlie's *Municipal Administration*, p. 83.

74 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, p. 443.

75 This charter was enacted by the legislature of Illinois at the session ending March 6, 1837. The original copy can be found in the *Laws of Illinois*, 1837, pp. 50 ff. It is also found in a pamphlet entitled *The Charters of the City of Chicago*, compiled by President Edmund J. James of the University of Illinois.

76 Sparling's *Municipal History of Chicago* in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, p. 32.

77 Sparling's *Municipal History of Chicago* in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, p. 31.

78 Sparling's *Municipal History of Chicago* in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, p. 31.

79 Sparling's *Municipal History of Chicago* in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, p. 29.

80 Larson's *Financial History of Milwaukee* in *Bulletin of the University of Wisconsin: Economics and Political Science Series*, Vol. IV, pp. 163, 164.

81 Eaton's *The Government of Municipalities*, p. 11.

82 MacKenzie's *Introduction to Social Philosophy*, p. 101.

83 Carnegie's *Triumphant Democracy*, pp. 46 ff, cited in Howard's *Local Constitutional History of the United States*, p. 150, note.

84 Beard's *American City Government*, p. 1.

85 Munro's *The Government of American Cities*, p. 9; James's *The Growth of Great Cities in Area and Population: A Study in Municipal Statistics*, p. 2. In the census of the United States, only that population is counted as urban which is to be found in cities of 8,000 inhabitants or upwards.

86 Weber's *The Growth of Cities* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. VI, pp. 23, 24.

87 Weber's *The Growth of Cities in the Columbia University Studies in History, Economics, and Public Law*, Vol. XI, pp. 24, 25.

88 Fairlie's *Municipal Administration*, pp. 86, 87.

89 Godkin says: "American cities . . . are without exception the creations of a state; they have grown up either under state supervision or through state instigation; that is, they owe their origin and constitution to the government. Their charters have usually been devised or influenced by people who did not expect to live in them, and who had no personal knowledge of their special needs. In other words, an American municipal charter has been rather the embodiment of an *a priori* view of the kind of a thing a city ought to be, than a legal recognition of preëxisting wants and customs."—Godkin's *Unforeseen Tendencies of Democracy*, p. 146.

90 Fairlie's *Essays in Municipal Administration*, p. 92.

91 Fairlie's *Municipal Administration*, p. 87.

92 Goodnow's *Comparative Administrative Law*, Vol. I, p. 205.

93 Matthews's *The City Government of Boston*, p. 170.

94 Durand's *The Finances of New York City*, p. 69.

95 Wilcox's *Municipal Government in Michigan and Ohio*, in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, pp. 450, 451.

96 Sparling's *Municipal History of Chicago*, in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, pp. 115-117.

97 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, p. 422.

98 Allison and Penrose's *The City Government of Philadelphia*, in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. V, p. 49.

99 Matthews's *The City Government of Boston*, p. 167.

100 Durand's *The Finances of New York City*, p. 77.

101 Munro's *The Government of American Cities*, p. 14.

102 Durand's *The Finances of New York City*, p. 78.

103 Durand's *The Finances of New York City*, p. 79.

104 Durand's *The Finances of New York City*, p. 79.

105 Hollander's *The Finances of Baltimore*, p. 204.

106 Sparling's *Municipal History of Chicago* in *Bulletin of the University of Wisconsin: Economics, Political Science, and History Series*, Vol. II, p. 129.

107 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, p. 427.

108 "A law of 1866 established a Board of Metropolitan Police Commissioners and removed the police fund, with the tax levy for its support, from the control of the Council. A board of four commissioners, appointed by the Governor of the State, assumed full management of the police

function. The purpose of this change is not clear, although the Mayor, who was made ex-officio member of the board was assured that it would prove to be worth while."—Williamson's *The Finances of Cleveland in Columbia University Studies in History, Economics, and Public Law*, Vol. XXV, pp. 465-467.

109 Allison and Penrose's *The City Government of Philadelphia in the Johns Hopkins University Studies in Historical and Political Science*, Vol. V, p. 53.

110 Fairlie's *Municipal Administration*, pp. 90, 91.

111 Munro's *The Government of American Cities*, p. 15.

112 As to the significance of the new conditions produced by the large aggregation of urban population, and the proper solution of the different problems involved, Dillon writes as follows:

"Density of population is the foundation of municipal organization, and each centre of density is the appropriate municipal unit. But the process has continued so long that now a population which a hundred years ago would have made a populous nation is to be found gathered in a single centre. The interests of this aggregation of inhabitants are common in their entirety, but separate and distinct when applied to topographical and other characteristics and peculiarities of the component parts. Historically, too, vested interests and peculiar rights may have accrued to portions of this locality which have given them an existence and characteristics distinguishable from other parts. The territory covered by these enormous aggregations of individuals is too extensive to permit the successful application of the simpler form of municipal government; and the problem which has to be met is to devise a method which will at once centralize the general interests of the entire community in a central body, and distribute the local interests peculiar to the different parts among bodies qualified to interpret the demands and requirements of the localities."—Dillon's *Commentaries on the Laws of Municipal Corporations*, Vol. I, p. 37.

113 Devlin's *Municipal Reforms in the United States*, p. 4.

114 Munro's *The Government of American Cities*, p. 55.

115 These States were as follows: Florida, 1865; Nebraska, 1867; Arkansas, 1868; Illinois and New York, 1870; West Virginia, 1872; Texas and Pennsylvania, 1873; and some other States adopted somewhat different constitutional provisions, aimed more or less definitely at the evils of special legislation.—Fairlie's *Municipal Development in the United States in A Municipal Program*, p. 24.

116 Munro's *The Government of American Cities*, p. 54.

117 Goodnow's *City Government in the United States*, pp. 65, 66.

118 Goodnow's *City Government in the United States*, p. 66.

119 Durand's *The Finances of New York City*, p. 165.

120 Cited in Greenlaw's *Office of Mayor in the United States in Municipal Affairs*, Vol. III, p. 47.



121 Wilcox's *Municipal Government in Michigan and Ohio* in the *Columbia University Studies in History, Economics, and Public Law*, Vol. V, pp. 465-467.

122 Eaton's *The Government of Municipalities*, p. 4.

123 These pioneer home rule States are Missouri (1875), California (1879), Washington (1889), and Minnesota (1896).

### CHAPTER III

124 Eliot's *Better Municipal Government* in Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 21101.

125 Goodnow's *Municipal Government*, p. 176.

126 Howard's *Local Constitutional History of the United States*, p. 75.

127 Howard's *Local Constitutional History of the United States*, p. 78.

128 Dodd's *Government of the District of Columbia*, pp. 73-80.

129 Fairlie's *Local Government in Counties, Towns, and Villages*, p. 75.

130 MacGregor's *City Government by Commission*, pp. 21-22.

131 Scroggs's *Commission Government in the South* in *The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 682.

132 Howe's *Municipal History of New Orleans* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. VII, p. 172.

133 Howe's *Municipal History of New Orleans* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. VII, p. 173.

134 Scroggs's *Commission Government in the South* in *The Annals of the American Academy of Political and Social Science*, Vol. 38, pp. 684, 685.

135 Scroggs's *Commission Government in the South* in *The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 685; MacGregor's *City Government by Commission*, p. 20.

136 The conception of American city government during this period has been well expressed by John R. Commons in the following words:

"The city is looked upon as a business corporation, instead of a political corporation, to be managed in a business manner. It must therefore have a general manager, who shall appoint all heads of departments, and become clearly responsible for its administration. Power must be taken from the council and from boards, and be concentrated in the mayor. The mayor must be elected by popular vote."—Commons's *Proportional Representation*, p. 198.

137 Garvin's *Better City Government* in *The Arena*, Vol. 41, p. 39.

138 Woodruff's *City Government by Commission*, p. 1.

139 Munro's *The Government of American Cities*, p. 295.

140 Munro's *Galveston Plan of City Government* in the *Proceedings of the Providence Conference of the National Municipal League*, 1907, p. 144.

141 Munro's *The Government of American Cities*, p. 295.

142 James's *Two Successful Experiments in Civic Government: Galveston and Houston, Texas*, in *The Arena*, Vol. 38, p. 8.

143 Bradford's *Commission Government in American Cities*, p. 5; MacGregor's *City Government by Commission*, p. 35.

144 Eliot's *Better Municipal Government* in Beard's *Loose Leaf Digest of Short Ballot Charters*, p. 21101.

145 Cited in Bradford's *Commission Government in American Cities*, pp. 5, 6.

146 Scroggs's *Commission Government in the South* in *The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 686.

147 Williams's *Governing Cities by Commission* in *The World Today*, Vol. 11, p. 945.

148 James's *Two Successful Experiments in Civic Government: Galveston and Houston, Texas*, in *The Arena*, Vol. 38, p. 9.

149 Cited in James's *Two Successful Experiments in Civic Government: Galveston and Houston, Texas*, in *The Arena*, Vol. 38, p. 10.

150 *Ex parte Lewis*, 73 Southwestern Reporter 811; or 45 Texas Criminal Report 1.

151 Brown et al vs. City of Galveston, 97 Texas Report 1.

152 MacGregor's *City Government by Commission*, p. 195. The word "Commissioner", as used in the charter of Galveston and all subsequent charters, is immaterial. One writer has suggested the title "Municipal Managers" as a good descriptive phrase, because that is precisely what they are.—Pollock and Morgan's *Modern Cities*, p. 183.

153 Taking advantage of the constitutional home rule amendment adopted in 1912, Galveston amended its charter on September 30, 1913, but not in any radical aspects. Commenting on these amendments, the editor of the *National Municipal Review* says: "The subject matter of some of the amendments, (and this is characteristic of Texas charters generally) strikingly illustrates the need of a standard test by which a great mass of detail will be eliminated from the basic law of the city and put into an administrative code, which will be amendable by the governing body of the city. Were such a distinction recognized we should not have a charter amendment 'adding section 35 granting the city commissioners power to control and regulate use of streets and prevent heavy traffic on certain streets, such as Broadway, etc.', or 'amending section 20a, fixing the salaries of firemen, also captain engineers and firemen employed on fire boats', or 'adding section 62aa extending saloon limits so as to authorize the location of barrooms east of Sixth Street and south of Avenue H.'"—*National Municipal Review*, Vol. III, p. 114.

154 *Charter of the City of Galveston*, Sec. 5.

155 *Charter of the City of Galveston*, Sec. 6.

156 *Charter of the City of Galveston*, Sec. 8.

157 *Charter of the City of Galveston*, Sec. 12.

158 *Charter of the City of Galveston*, Sec. 17.

159 *Charter of the City of Galveston*, Sec. 5.

160 *Charter of the City of Galveston*, Sec. 6.

161 *Charter of the City of Galveston*, Sec. 12a.

162 *Charter of the City of Galveston*, Sec. 13.

163 *Charter of the City of Galveston*, Sec. 7.

- 164 *Charter of the City of Galveston*, Sec. 12.
- 165 Bradford's *Commission Government in American Cities*, p. 7;
- MacGregor's *City Government by Commission*, p. 33.
- 166 *Charter of the City of Galveston*, Sec. 19.
- 167 *Charter of the City of Galveston*, Sec. 20.
- 168 *Charter of the City of Galveston*, Sec. 19.
- 169 *Charter of the City of Galveston*, Sec. 32.
- 170 *Charter of the City of Galveston*, Sec. 32.
- 171 *Charter of the City of Galveston*, Sec. 9.
- 172 *Charter of the City of Galveston*, Sec. 21.
- 173 *Charter of the City of Galveston*, Sec. 29.
- 174 *Charter of the City of Galveston*, Sec. 24.
- 175 *Charter of the City of Galveston*, Sec. 13.
- 176 Turner's *Galveston: A Business Corporation in McClure's Magazine*, Vol. 27, pp. 613, 614.
- 177 MacGregor's *City Government by Commission*, p. 40.
- 178 James's *Houston and its City Commission in The Arena*, Vol. 33, p. 145.
- 179 Cited in Scroggs's *Commission Government in the South in The Annals of the American Academy of Political and Social Science*, Vol. 33, p. 687.
- 180 Bradford's *Commission Government in American Cities*, p. 23.
- 181 *National Municipal Review*, Vol. III, p. 114.
- 182 *Charter of the City of Houston* (compiled by E. P. Phelps), Art. V, Sec. 4a.
- 183 *Charter of the City of Houston*, Art. VII, Sec. 10.
- 184 Bradford's *Commission Government in American Cities*, p. 24.
- 185 *Charter of the City of Houston*, Art. V, Sec. 3.
- 186 *Charter of the City of Houston*, Art. VI, Sec. 7.
- 187 *Charter of the City of Houston*, Art. VI, Sec. 6.
- 188 *Charter of the City of Houston*, Art. VI, Sec. 8.
- 189 *Charter of the City of Houston*, Art. V, Sec. 2.
- 190 *Charter of the City of Houston*, Art. VII, Sec. 8.
- 191 *Charter of the City of Houston*, Art. VI, Sec. 7.
- 192 *Charter of the City of Houston*, Art. VII, Sec. 1.
- 193 *Charter of the City of Houston*, Art. VII, Sec. 8.
- 194 *Charter of the City of Houston*, Art. V, Sec. 1.
- 195 *Charter of the City of Houston*, Art. VI, Sec. 5.
- 196 *Charter of the City of Houston*, Art. VII, Sec. 5.
- 197 *Charter of the City of Houston*, Art. VII, Sec. 11.
- 198 One writer has summarized the reasons for election to specific office, and for election at random as follows:  
Reasons for election to specific office:  
(1) "Election to specific office is essential for consistency with the fundamental principle of commission government that the line of responsibility from members of the council to the people should be clear and sharp."

(2) "It should conduce to harmony and attention to business in the council to have each member in a position from which the rest cannot depose him, in which he knows he must stay until the end of his term, and in which he must make good, if at all."

(3) "Election to specific office enables a man to know in advance for what office he is running, and the voter to know to what office he is electing him."

(4) "Election to specific offices is not open to the objection that the people should never elect experts, for there is no necessity that these men should be experts, but there is necessity that they should be elected to a place in which they have an interest and for which the voters will consciously support them."

(5) "Experience has already developed serious objections to the practice of election at random."

Reasons for election at random:

(1) "Election at random makes it unnecessary for candidates to have to get elected to a certain office, or to be lost from the council."

(2) "An inferior banker might be elected to the headship of the department of finance over a man with general experience in business, greatly his inferior in actual fitness for the office."

(3) "It is almost invariable practice of American commission governed cities to elect their councils at random."—Johnson's *Commission Government for Cities: Election to Specific Office vs. Election at Random in the National Municipal Review*, Vol. II, pp. 661-664.

199 Childs's *Short Ballot Principles*, p. 44.

200 *Charter of the City of Houston*, Art. VI, Sec. 9. Originally the mayor in Houston received a salary of \$4000 per annum, but this was raised to \$7500 by the 1913 home rule amendment. Another amendment increasing the salaries of the other commissioners from \$2400 to \$3600, however, was lost.

201 *Charter of the City of Houston*, Art. VII, Sec. 6.

202 *Charter of the City of Houston*, Art. IV, Sec. 1.

203 *Charter of the City of Houston*, Art. II, Sec. 18.

204 *Charter of the City of Houston*, Art. IX, Sec. 15.

205 "The city of Houston may by purchase, lease, condemnation, construction or otherwise, establish, own, equip, maintain, conduct and operate, in whole or in part, libraries, reading rooms, art galleries, museums, assembly or convention halls, parks, playgrounds, gymnasiums, baths, public toilets, and comfort stations, abattoirs, municipal lodging houses and tenement houses, dispensaries, infirmaries, free employment bureaus, almshouses, work farms, detention homes, cemeteries, crematories, morgues, works or plants for the preparation, manufacture, handling, or transportation of materials required in the construction, completion, maintenance or repair of streets, bridges, sidewalks, sewers and any public work, improvement, building or utility, whether specifically mentioned herein or not . . . . The City of Houston may also by purchase, condemnation, con-

struction or otherwise establish, own, equip, maintain, conduct and operate in whole or in part steam laundries, ice factories, bakeries, belt and terminal railways and union depots within or without the City of Houston; also, any and all buildings, establishments, institutions and places, whether situated inside or outside of the city limits, which are necessary or convenient for the transaction of public business or for promoting the health, morals, education or welfare of the inhabitants of the city, or for their amusement, recreation, entertainment or benefit".—*Charter of the City of Houston*, Art. II, Sec. 7a.

206 *Charter of the City of Houston*, Art. VII b, Sec. 1. The following quotations in the next two paragraphs are all taken from the same article.

207 The basis of percentage is the same as in the case of the initiative.

208 *Charter of the City of Houston*, Art. VII a, Sec. 1. The expressions within quotation marks in this paragraph are taken from the same article unless otherwise indicated.

209 Wilcox's *Government by all the People*, p. 167.

210 *Charter of the City of Houston*, Art. V a. The expressions within quotation marks in this paragraph are taken from the sections of the same article.

211 Farbar's *Results of Commission Government in Houston, Texas*, in *The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 904.

#### CHAPTER IV

212 *The Arena*, Vol. 38, p. 431.

213 Shambaugh's *The Commission Plan of Government in Proceedings of Minnesota Academy of Social Science*, Vol. III, p. 158.

214 Bowman's *Administration of Iowa in the Columbia University Studies in History, Economics, and Public Law*, Vol. XVIII, p. 13.

215 *Constitution of Iowa*, 1857, Art. III, Sec. 30.

216 *Laws of Iowa*, 1858, p. 363.

217 *Census of Iowa*, 1915, p. xix.

218 *Census of Iowa*, 1915, p. xxxi.

219 *Census of Iowa*, 1915, p. xxxiv.

220 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 9.

221 *The Register and Leader*, February 2, 1907; Horack's *The Government of Iowa*, pp. 128-130; Hamilton's *Government by Commission*, pp. 26 ff.

222 Hamilton's *Government by Commission*, p. 93.

223 Hamilton's *Government by Commission*, p. 92.

224 *The Arena*, Vol. 38, p. 433. "Des Moines' most important departure from the norm of municipal practice has been its policy of securing all classes of public service through private corporations, whereas many cities own and operate their own water works."—Hamilton's *Government by Commission*, p. 31.

- 225 *The Arena*, Vol. 38, p. 434.
- 226 Horack's *Reorganisation of State Government in Iowa in the Iowa Applied History Series*, Vol. II, p. 7.
- 227 *Proceedings of the Iowa State Bar Association*, 1908, pp. 60, 61.
- 228 *Proceedings of the Iowa State Bar Association*, 1904, pp. 129-134.
- 229 Hamilton's *Government by Commission*, p. 126.
- 230 Berryhill's *The Des Moines Plan of Municipal Government in Proceedings of the Iowa State Bar Association*, 1908, p. 35.
- 231 Hamilton's *Government by Commission*, p. 105.
- 232 Berryhill's *The Des Moines Plan of Municipal Government in Proceedings of the Iowa State Bar Association*, 1908, p. 38.
- 233 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 11.
- 234 Hamilton's *Government by Commission*, p. 107.
- 235 *The Arena*, Vol. 38, p. 435.
- 236 Berryhill's *The Des Moines Plan of Municipal Government in Proceedings of the Iowa State Bar Association*, 1908, pp. 38, 39.
- 237 Hamilton's *Government by Commission*, p. 109.
- 238 Hamilton's *Government by Commission*, p. 108.
- 239 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 12.
- 240 The vote was 106 to 27 in favor of the Galveston plan with modifications.—*The Register and Leader*, February 2, 1907.
- 241 *The Register and Leader*, February 2, 1907.
- 242 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, pp. 12, 13.
- 243 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 14.
- 244 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 14.
- 245 *Laws of Iowa*, 1907, p. 38.
- 246 *Laws of Iowa*, 1909, p. 53.
- 247 *Laws of Iowa*, 1913, pp. 86, 87.
- 248 *Laws of Iowa*, 1909, pp. 53, 54.
- 249 *Laws of Iowa*, 1909, p. 57.
- 250 *Laws of Iowa*, 1909, pp. 54-56.
- 251 *Laws of Iowa*, 1909, pp. 54-56.
- 252 *Laws of Iowa*, 1907, pp. 41, 42.
- 253 *Laws of Iowa*, 1908, p. 46.
- 254 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 15.
- 255 *Laws of Iowa*, 1909, p. 57.
- 256 *Supplemental Supplement to the Code of Iowa*, 1915, p. 82.
- 257 *Laws of Iowa*, 1909, p. 57.
- 258 *Laws of Iowa*, 1907, p. 43.
- 259 *Laws of Iowa*, 1907, p. 42.

- 260 MacGregor's *City Government by Commission*, p. 48.
- 261 *Supplemental Supplement to the Code of Iowa*, 1915, p. 82.
- 262 *Laws of Iowa*, 1907, p. 43.
- 263 *Laws of Iowa*, 1909, p. 57.
- 264 *Laws of Iowa*, 1907, p. 42.
- 265 *Laws of Iowa*, 1907, pp. 42, 43.
- 266 *Laws of Iowa*, 1913, p. 87.
- 267 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 17.
- 268 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 17.
- 269 *Laws of Iowa*, 1907, p. 44.
- 270 *Laws of Iowa*, 1907, p. 44.
- 271 *Laws of Iowa*, 1907, p. 43.
- 272 Shambaugh's *Commission Government in Iowa: The Des Moines Plan*, p. 26.
- 273 *Laws of Iowa*, 1907, pp. 47, 48.
- 274 *Laws of Iowa*, 1907, pp. 46, 47.
- 275 *Laws of Iowa*, 1909, p. 59.
- 276 *Laws of Iowa*, 1907, p. 47.
- 277 *Laws of Iowa*, 1907, p. 43.
- 278 *Laws of Iowa*, 1907, p. 46.
- 279 *Supplemental Supplement to the Code of Iowa*, 1915, p. 83.
- 280 *Laws of Iowa*, 1907, p. 46. These exempted officials are the city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, market master, street commissioner, and three library trustees. The law was made to apply to the chief of the fire department in 1911.—*Laws of Iowa*, 1911, p. 39.
- 281 *Supplemental Supplement to the Code of Iowa*, 1915, pp. 83, 84.
- 282 *Laws of Iowa*, 1907, pp. 48, 49.
- 283 Turner's *The New City Government* in *McClure's Magazine*, Vol. 35, p. 97.
- 284 *The Arena*, Vol. 38, p. 435.
- 285 *The Register and Leader*, June 19, 1907.
- 286 *The Register and Leader*, June 21, 1907.
- 287 *The Register and Leader*, October 10, 1907.
- 288 The text of the decision is found in *The Register and Leader*, November 24, 1907; and also in *Hamilton's Government by Commission*, pp. 249-274.
- 289 *Eckerson vs. City of Des Moines*, 137 Iowa 452.

## CHAPTER V

- 290 Williams's *Governing Cities by Commission* in *The World Today*, Vol. XI, p. 943.

291 Bradford's *History and Underlying Principles of Commission Government in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 673.

292 Bates's *Commission Government in Kansas in Proceedings of American Political Science Association*, Vol. VII, p. 114.

293 Bruere's *The New City Government*, p. 129.

294 *The American Political Science Review*, Vol. IV, p. 223.

295 Munro's *Ten Years of Commission Government in the National Municipal Review*, Vol. 1, p. 563.

296 These six States are Connecticut, Delaware, Indiana, New Hampshire, Rhode Island, and Vermont.

297 These twenty-seven States are as follows: Alabama, Arizona, Arkansas, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. Laws in Alabama, Pennsylvania, and Utah are obligatory and self-executing. Missouri provides an obligatory commission law for cities of the second class, and a permissive law for cities of the third class. The laws in all the rest of the States are optional.

298 These States are Arizona, Missouri, Nebraska, Oklahoma, Texas, and Washington.

299 These States are California, Colorado, Michigan, Minnesota, Oregon, and Ohio.

300 This State is Ohio.

301 These States are Massachusetts, New York, and Virginia.

302 These six States are Florida, Georgia, Maine, Maryland, North Carolina, and West Virginia.

303 Bates's *Commission Government in Kansas in The Annals of the American Academy of Political and Social Science*, Vol. 18, p. 719.

304 *Laws of Kansas*, 1909, Ch. 74, pp. 131-140.

305 *Laws of Kansas*, 1909, Ch. 82, pp. 153-169.

306 *Laws of Kansas*, 1913, Ch. 128, pp. 204-211.

307 In Kansas the cities of the first class include all cities over fifteen thousand inhabitants; the second class those over two thousand, but not over fifteen thousand; and the third, all incorporated places of not over two thousand population.—Bates's *Commission Government in Kansas in The Annals of the American Academy of Political and Social Science*, Vol. 18, p. 719.

308 *Laws of Kansas*, 1913, Ch. 85, pp. 135-142; *National Municipal Review*, Vol. II, p. 682.

309 By a constitutional amendment in 1914 the recall was made applicable to all cities in the State on a twenty-five percent petition.—*Constitution of Kansas*, Art. 4, Secs. 3-5.

310 *Laws of Kansas*, 1911, Ch. 184, pp. 313, 314.



311 The cities which have adopted the commission plan are as follows: Leavenworth and Caldwell in 1908; Anthony, Hutchinson, Independence, Junction City, and Wichita in 1909; Abilene, Cherryville, Dodge City, Emporia, Eureka, Iola, Kansas City, Girard, Marion, Neodesha, Newton, Parsons, Topeka, Wellington, and Holton in 1910; Chanute, Council Grove, Hiawatha, Manhattan, Pittsburg, and Pratt in 1911; Arkansas City, Great Bend, Kingman, and Olante in 1912; Fredonia, Garden City, Garnett, Lawrence, Ottawa, Osawatomee, and Sabetha in 1913; Fort Scott and McPherson in 1914; St. Mary's and Horton in 1915.—*Equity*, Vol. 18, pp. 216-222.

312 *Laws of North Dakota*, 1911, Ch. 77.

313 *Beard's Digest of Short Ballot Charters*, p. 35401.

314 The cities in North Dakota adopted the commission plan as follows: Mandan in 1907; Bismarck and Minot in 1909; Devil's Lake in 1911; Fargo, Hillsboro, and Williston in 1913; Ray in 1914; Marmarth in 1915; and Washburn in 1916.—*Equity*, Vol. 18, pp. 258, 259.

315 *Thirteenth Session, Legislative Assembly, State of South Dakota, Senate Bill*, No. 187; *Laws of South Dakota*, 1913, Ch. 119; 1915, Ch. 113.

316 The names of the cities and the dates of adoption are as follows: Sioux Falls in 1908; Canton, Chamberlain, Dell Rapids, Huron, Pierre, Rapid City, and Yankton in 1910; Aberdeen and Lead in 1911; Belle Fourche, Madison, and Watertown in 1912; and Springfield in 1914.—*Equity*, Vol. 18, pp. 276-280.

317 *Laws of Mississippi*, 1908, Ch. 108, pp. 101-104.

318 *Laws of Mississippi*, 1912, Ch. 120, pp. 107-119; *Beard's Digest of Short Ballot Charters*, p. 36402.

319 *Laws of Mississippi*, 1914, Ch. 158, pp. 201-204. The seventh section of this law reads as follows: "The provisions of this act shall apply to municipalities, whether operating under special charters or under Chapter 120 of Laws of 1912, providing for commission form of government, or under Chapter 99 of the Code of 1906, relative to municipalities, and all laws amendatory thereof."

320 Other cities in Mississippi which adopted the commission form of government in pursuance of the State laws are Gulfport and Laurel in 1911; Charleston, Jackson, Meridian, Vicksburg, and Greenwood in 1912.—*Equity* Vol. 18, pp. 240, 241.

321 Bradford's *Commission Government in American Cities*, pp. 73, 74;

322 *Equity*, Vol. 18, p. 284; *Laws of Texas*, 1913, Ch. 21, pp. 36-39.

323 A partial list of the Texas cities operating under general commission laws of the State is as follows: Aransas Pass, Kennedy, Lyford, Marble Falls, and Port Lavaca in 1910; Abilene, McAllen, Port Arthur, San Benito, and Spur in 1911; Bishop, Franklin, Frankston, Nixon, and Hereford in 1912; Jacksboro, McKinnery, Somerville, and Sweetwater in 1913; Coleman, Honey Grove, Orange, and Groesbeck in 1914; and Alice in 1915.—*Equity*, Vol. 18, pp. 289-295.

324 *Laws of Wisconsin*, 1909, Ch. 48; *Laws of Wisconsin*, 1911, Ch. 67A; *Laws of Wisconsin*, 1915, pp. 58, 59. The law is also published in pamphlet form, entitled *Wisconsin Law; Commission Form of City Government*.

325 Mr. MacGregor points out the only reason for not including Milwaukee was that "at that session of the Legislature Milwaukee was endeavoring to secure home rule, and it was feared that if made applicable to Milwaukee the commission bill might interfere with this project as well as endanger its own passage."—MacGregor's *Commission Government in the West in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 730.

326 *Wisconsin Law: Commission Form of City Government*, p. 2.

327 *Wisconsin Law: Commission Form of City Government*, p. 3.

328 155 Wisconsin 63.

329 *Equity*, Vol. 18, p. 306.

330 The names of these Wisconsin cities and the dates of their adoption are as follows: Eau Claire in 1910; Appleton and Oshkosh in 1911; Janesville, Menominee, Portage, Rice Lake, and Superior in 1913; Ashland and Ladysmith in 1913; Antigo and Fond du Lac in 1914; and Green Bay in 1916.—*Equity*, Vol. 18, pp. 306-308.

331 Bradford's *Commission Government in American Cities*, pp. 73, 74; Fairlie's *Commission Government in Illinois Cities in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 750.

332 *Laws of Illinois Relating to Commission Form of Municipal Government*, p. 2.

333 *Laws of Illinois Relating to Commission Form of Municipal Government*, p. 28.

334 Fairlie's *Commission Government in American Cities in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 753.

335 *Laws of Illinois Relating to Commission Form of Municipal Government*, pp. 34, 54, 55.

336 *Laws of Illinois*, 1915, pp. 282, 283.

337 In 1911 the following nineteen Illinois cities and villages adopted the commission plan: Braceville, Carbondale, Clinton, Decatur, Dixon, Elgin, Forest Park, Hamilton, Hillsboro, Jacksonville, Kewanee, Moline, Ottawa, Pekin, Rochelle, Rock Island, Springfield, Spring Valley, and Waukegan. These cities were followed by Geneseo, Harvey, Marseilles, and Naperville in 1912; Port Byron, Catlin, Harrisburg, Cairo, and Murphysboro in 1913; Flora, Bloomington, Highland Park, and Effingham in 1914; Coal City, Joliet, Lincoln, Sterling, Paris, and Princeton in 1915.—*Equity*, Vol. 18, pp. 206-212.

338 Beard's *Digest of Short Ballot Charters*, p. 33401.

339 *Code of Laws of South Carolina*, 1912, pp. 841-849; Benet's *A Campaign for a Commission Form of Government in The American City*, Vol. III, pp. 276-278.

340 Benet's *A Campaign for a Commission Form of Government in the American City*, Vol. III, p. 276. Other cities in South Carolina which have followed the example of Columbia are Florence in 1912; Orangeburg and Spartanburg in 1913; and Rock Hill in 1916.—*Equity*, Vol. 18, pp. 274-276.

341 Cities of the second class in Kentucky are those having a population between 20,000 and 100,000.

342 *Acts of Kentucky*, 1910, Ch. 50; *Beard's Digest of Short Ballot Charters*, p. 33701.

343 Cities of the third class in Kentucky are those cities having a population between 8000 and 20,000.

344 Cities of the fourth class in Kentucky are those cities having a population between 3000 and 8000.

345 *Acts of Kentucky*, 1914, Ch. 77, pp. 271-287; *Acts of Kentucky*, 1914, Ch. 92, pp. 477-496.

346 Kentucky cities adopting the commission plan under general laws are Newport in 1910; Lexington and Covington in 1911; Paducah in 1912; Cynthiana and Hopkinsville in 1914.—*Equity*, Vol. 18, pp. 223, 224.

347 *Beard's Digest of Short Ballot Charters*, p. 36301.

348 *Laws of Louisiana*, 1912, Act. No. 207, House Bill No. 115, providing a form of government for cities of 2500 and over; *Laws of Louisiana*, 1916, Act. No. 6.

349 *Laws of Louisiana*, 1916, Act. No. 6, Sec. 2.

350 These cities are Shreveport in 1910; Hammond, Lake Charles, and New Iberia in 1911; Baton Rouge and Donaldsonville in 1912; Alexandria and Jennings in 1913.—*Equity*, Vol. 18, pp. 224-226.

351 New Orleans and Natchitoches received special commission charters in 1912; and Lafayette adopted the plan in 1914 by special act.—*Equity*, Vol. 18, pp. 225, 226.

352 *Laws of Wyoming*, 1911, Ch. 84. This law, with amendments, is also found in *Election Laws of the State of Wyoming*, 1914, pp. 97-105.

353 Sheridan in 1911, and Cheyenne in 1913.—*Equity*, Vol. 18, p. 309.

354 *Laws of Montana*, 1911, Ch. 57; *Beard's Digest of Short Ballot Charters*, p. 35301.

355 *Laws of Montana*, 1912, p. 496.

356 These three cities are Missoula in 1911; Polson in 1912; and Helena in 1915.—*Equity*, Vol. 18, p. 245.

357 *Laws of Idaho*, 1911, p. 281.

358 *Laws of Idaho*, 1911, p. 292.

359 *Laws of Idaho*, 1911, p. 295.

360 *Laws of Idaho*, 1911, p. 301.

361 *Laws of Idaho*, 1911, pp. 302, 303.

362 *Laws of Idaho*, 1911, p. 308.

363 *Equity*, Vol. 18, p. 204.

364 *Constitution of Washington*, Art. XI, Sec. 10.

365 These five cities are Seattle, Tacoma, Spokane, Bellingham, and Everett.—*Abstract of the Thirteenth Census of the United States, 1910, Supplement for Iowa*, p. 75.

366 Beard's *Digest of Short Ballot Charters*, p. 38301; *Laws of Washington*, 1911, Ch. 116.

367 *State ex rel Lynch v. Fairley*, 76 Washington 332.

368 *Constitution of Washington*, Art. I, Secs. 33, 34.

369 Cities in Washington which have elected to come under the provisions of the general commission act are Centralia in 1910; Chehalis, Hoquiam, North Yakima, and Walla Walla in 1911.—*Equity*, Vol. 18, pp. 301, 302.

370 Cited in *Current Literature*, Vol. 50, p. 477.

371 *State of New Jersey, An act relating to regulating and providing for the government of cities, towns, boroughs, and other municipalities within the State*.

372 Hennessy's *Municipal Progress in New Jersey in the American City*, Vol. X, p. 501.

373 *State of New Jersey, Amendment to the Act for the Government of cities, Special session 1913*, Ch. 22, p. 3.

374 *State of New Jersey, An Act relating to regulating and providing for the government of cities, towns, boroughs and other municipalities within the State*, pp. 19-21.

375 These cities are Hawthorne, Margate, Ocean City, Panaic, Ridgewood, and Trenton in 1911; Atlantic City, Ridgely Park, Borough of Deal, Long Branch, Nutley, Longport, and Wildwood in 1912; Sea Isle City, Millville, Phillipsburg, Beverly, Bordentown, Jersey City, and Vineland in 1913; Orange, Asbury Park, Belleville, Irvington, and Haddonfield in 1914; Bayonne, Bradley Beach, Cape May, New Brunswick, and Hoboken in 1915; Allenhurst and Lambertville in 1916.—*Equity*, Vol. 18, pp. 249-252.

376 *Laws of Alabama*, 1911, Act No. 330; Beard's *Digest of Short Ballot Charters*, p. 33903.

377 *National Municipal Review*, Vol. I, p. 98.

378 *Laws of Alabama*, 1911, Act. No. 504.

379 These cities are as follows: Cordova, Hartselle, Talladega, and Tuscaloosa since 1911; Carbon Hill, Elba, and Sheffield since 1912; and Florence since 1913.—*Equity*, Vol. 18, p. 183.

380 *Laws of California*, 1911, Ch. 418.

381 *Laws of Nebraska*, 1911, Ch. 24; Beard's *Digest of Short Ballot Charters*, p. 34601.

382 Nebraska cities under the commission form of government are Beatrice and Omaha since 1911; and Lincoln and Nebraska City since 1912.—*Equity*, Vol. 18, pp. 246, 247.

383 Cited in Bradford's *Commission Government in American Cities*, p. 107.

384 *Equity*, Vol. 18, p. 253.

- 385 *The Short Ballot Bulletin*, June, 1913, p. 7.
- 386 *Laws of Missouri*, 1913, p. 517.
- 387 *Laws of Missouri*, 1913, pp. 518-521.
- 388 *Laws of Missouri*, 1913, pp. 522, 523.
- 389 *Laws of Missouri*, 1913, pp. 525, 526.
- 390 These four cities are Kirksville, Monette, and West Plains since 1914; and Aurora since 1915.—*Equity*, Vol. 18, p. 243.
- 391 *National Municipal Review*, Vol. II, p. 285.
- 392 *Equity*, Vol. 18, pp. 280-283.
- 393 *Laws of Arkansas*, 1913, Act No. 13.
- 394 *Equity*, Vol. 18, p. 184.
- 395 *Statutes of Nevada*, 1915, pp. 294-298.
- 396 *Statutes of Nevada*, 1915, p. 297.
- 397 *National Municipal Review*, Vol. I, p. 119.
- 398 *Laws of Utah*, 1911, pp. 224-233; Beard's *Digest of Short Ballot Charters*, p. 37101. The law is also separately published in pamphlet form with the title, *Municipal Government: State Laws providing for the Organisation and Regulation of Municipalities*.
- 399 *Municipal Government: State Laws providing for the Organisation and Regulation of Municipalities*, p. 1.
- 400 *Laws of Alabama*, 1911, Act. No. 163; Beard's *Digest of Short Ballot Charters*, p. 33901.
- 401 *Laws of Alabama*, 1911, Act. No. 254; Beard's *Digest of Short Ballot Charters*, p. 33905.
- 402 In Pennsylvania cities are divided into three classes: Philadelphia, first class; Pittsburgh and Scranton, second class; and twenty-three cities of less than 100,000 population constitute the third class.
- 403 Fuller's *Commission Government for all Third-Class Cities in Pennsylvania* in *The American City*, Vol. IX, p. 123.
- 404 *Laws of Pennsylvania*, 1913, pp. 568-631. The law is also published in pamphlet form, with the title, *An Act providing for the incorporation, regulation, and government of cities of the third class*.
- 405 The law, however, fixes the salaries of the mayor and the councilmen elected under the provisions of the act, until thereafter changed by ordinance, to be as follows: For mayor, in cities having a population less than 15,000, \$500; in cities having a population between 15,000 and 30,000, \$1200; in cities having a population between 30,000 and 50,000, \$2500; in cities having a population between 50,000 and 70,000, \$3000; in cities having a population over 70,000, \$3500.
- For councilmen, in cities having a population less than 15,000, \$300; in cities having a population between 15,000 and 30,000, \$750; in cities having a population between 30,000 and 50,000, \$2000; in cities having a population between 50,000 and 70,000, \$2500; in cities having a population over 70,000, \$3000. *An Act providing for the incorporation, regulation, and government of cities of the third class, etc.*, pp. 25, 26, 32.

406 Fuller's *Commission Government for All Third-class Cities of Pennsylvania* in *The American City*, Vol. IX, p. 134.

407 The title of the Missouri commission law for cities of the second class is "An Act to repeal Article 3 of Chapter 84 of the Revised Statutes of Missouri of 1909, with all amendments thereto, said article being entitled, Cities of the Second Class, and to enact in lieu thereof a new article providing for the government of the second class."—*Laws of Missouri*, 1913, pp. 420-462.

408 *Laws of Missouri*, 1913, pp. 439, 440.

409 *Laws of Missouri*, 1913, p. 461.

410 *Constitution of Ohio*, Art. XVIII, Secs. 2, 8, 9.

411 *An Act to provide optional plans of government for municipalities, Ohio*, 1913, p. 1.

412 *An Act to provide optional plans of government for municipalities, Ohio*, 1913, p. 3.

413 *An Act to provide optional plans of government for municipalities, Ohio*, 1913, p. 21.

414 *An Act to provide optional plans of government for municipalities, Ohio*, 1913, p. 6.

415 *National Municipal Review*, Vol. V, pp. 659, 660.

416 *Virginia Code, Supplement*, 1916, p. 914.

417 *Virginia Code, Supplement*, 1916, p. 918.

418 Cited in *Equity*, Vol. 18, p. 297.

419 *Laws of New York*, 1914, Ch. 444.

420 *Equity*, Vol. 18, p. 255.

421 *General Acts of Massachusetts*, 1915, Ch. 267. This act is also published in pamphlet form under the title of "An act to Simplify the Revision of City Charters".

422 Cited in *The American Political Science Review*, Vol. IX, p. 324.

423 *Constitution of Missouri*, Art. IX, Secs. 16, 17, 20-23.

424 *Constitution of California*, Art. XI, Secs. 8, 8a, and 8½.

425 Reed's *Municipal Home Rule in California* in the *National Municipal Review*, Vol. I, p. 572.

426 *Equity*, Vol. 18, pp. 186-193.

427 *Constitution of Washington*, Art. XI, Sec. 10.

428 62 Washington 312.

429 *University of Washington Extension Journal*, Vol. I, pp. 166-168.

430 *Enabling Act of the State of Washington and Charter of the City of Tacoma, Washington*.

431 Patton's *Home Rule in Iowa* in *Iowa Applied History Series*, Vol. II, pp. 60, 61.

432 *Charter of the City of Spokane, State of Washington*.

433 *Constitution of Minnesota*, Art. IV, Sec. 36.

434 *Laws of Minnesota*, 1909, Ch. 170.

435 Codman's *Commission Government for Cities* in the *Proceedings of Minnesota Academy of Social Science*, 1911, Vol. V, pp. 94, 95.

- 436 *The American Political Science Review*, Vol. V, p. 80.
  - 437 *National Municipal Review*, Vol. I, p. 287.
  - 438 *Charter of the City of Duluth*.
  - 439 *Equity*, Vol. 18, pp. 238, 239.
  - 440 *Patton's Home Rule in Iowa*, p. 63.
  - 441 *Constitution of Colorado*, Art. XX.
  - 442 *The Charter of the City of Colorado Springs, Colorado*.
  - 443 *The Charter of the City of Grand Junction, Colorado*.
  - 444 Bucklin's *The Grand Junction Plan of City Government in The Annals of the American Academy of Political and Social Science*, Vol. 38, p. 760.
  - 445 Meredith's *Denver's New Charter in the National Municipal Review*, Vol. V. pp. 471-475.
  - 446 *Equity*, Vol. 18, pp. 195-198.
  - 447 *Constitution of Oregon*, Art. XI, Sec. 2; Lord's *Oregon Laws*, Secs. 3481, 3482.
  - 448 Beard's *Digest of Short Ballot Charters*, p. 38201.
  - 449 *The Charter of the City of Portland, Oregon*.
  - 450 *Constitution of Oklahoma*, Art. XVIII, Sec. 3 (a).
  - 451 *The American Political Science Review*, Vol. VIII, p. 466.
  - 452 MacGregor's *Commission Government in the West in The Annals of American Academy of Political and Social Science*, Vol. 38, p. 739.
- Oklahoma cities under the commission form are as follows: Ardmore in 1908; Enid and Tulsa in 1909; Bartlesville, Duncan, El Reno, Guthrie, Miami, Muskogee, McAlester, Purcell, Sapulpa, and Wagoner in 1910; Holdenville, Layton, Oklahoma City, and Stillwater in 1911; Ada, Okmulgee, and Pawhuska in 1912; Wewoka and Weatherford in 1913.—*Equity*, Vol. 18, pp. 263-267.
- 453 *Constitution of Michigan*, Art. VIII, Secs. 20, 21.
  - 454 *Laws relating to the incorporation and general powers of cities in Michigan* (Revision of 1913), Part III, pp. 146-167.
  - 455 Michigan cities adopting commission charters under the home rule provisions are as follows: Harbor Beach and Port Huron in 1910; Pontiac, East Jordan, Fremont, and Wyandotte in 1911; Monroe, Marquette, Owosso, Saginaw, and Traverse City in 1913; Adrian in 1914; and Munising in 1915.—*Equity*, Vol. 18, pp. 231-235.
  - 456 *Laws of Texas*, 1913, pp. 207-317.
  - 457 *Equity*, Vol. 18, pp. 284 ff.
  - 458 *Constitution of Arizona*, Art. XIII, Secs. 2, 3.
  - 459 *Patton's Home Rule in Iowa in Iowa Applied History Series*, Vol. II, p. 66.
  - 460 *Constitution of Ohio*, Art. XVIII, Secs. 8, 9.
  - 461 *Equity*, Vol. 18, p. 260.
  - 462 *Constitution of Nebraska*, Art. XI a.
  - 463 Beard's *Digest of Short Ballot Charters*, p. 38301.

- 464 *Beard's Digest of Short Ballot Charters*, p. 33305.
- 465 *An Act of the General Assembly of North Carolina to Amend the Charter of the City of Wilmington and Amendments thereto establishing Commission Form of Government.*
- 466 *Laws of West Virginia*, 1909, Ch. 3.
- 467 *Laws of West Virginia*, 1909, p. 1.
- 468 *Bradford's Commission Government in American Cities*, pp. 90, 91.
- 469 *Beard's Digest of Short Ballot Charters*, p. 33201.
- 470 *City Code and Charter, Cumberland, Maryland*, p. 56.
- 471 *City Code and Charter, Cumberland, Maryland*, p. 57.
- 472 *Equity*, Vol. 18, p. 227.
- 473 *National Municipal Review*, Vol. I, pp. 107, 108.
- 474 *Laws of Florida*, 1911, Act. No. 266, Ch. 6385.
- 475 *Laws of Florida*, 1911, Act. No. 235, Ch. 6363.
- 476 *Laws of Florida*, 1911, Act. No. 244, Ch. 6363.
- 477 *National Municipal Review*, Vol. I, pp. 104, 105.
- 478 *Equity*, Vol. 18, pp. 201 ff.
- 479 *Laws of Georgia*, 1911, Act. No. 176.
- 480 *Laws of Georgia*, 1911, Act. No. 293.
- 481 *Equity*, Vol. 18, p. 247.
- 482 *Beard's Digest of Short Ballot Charters*, p. 36009
- 483 *Charter of the City of Dallas*, Art. 8.
- 484 *Charter of the City of Dallas*, Art. 9.
- 485 *Charter of the City of Dallas*, Art. 2, Sec. 8.
- 486 *Hamilton's Government by Commission*, p. 9.
- 487 *Beard's Digest of Short Ballot Charters*, p. 36013.
- 488 *Beard's Digest of Short Ballot Charters*, p. 36005.
- 489 *Beard's Digest of Short Ballot Charters*, p. 38401.
- 490 *City of Haverhill, Massachusetts: City Charter*, 1914.
- 491 *An Act to Amend the Charter of the City of Gloucester.*
- 492 *National Municipal Review*, Vol. I, p. 108.
- 493 *Memphis Charter: Amendment to the Charter of the City of Memphis, Tennessee, being Senate Bill No. 574, Chapter 298, Acts of the Legislature, Year 1909.*
- 494 *Equity*, Vol. 18, p. 282.
- 495 *Political Science Quarterly*, Vol. 25, p. 373.
- 496 *The American City*, Vol. IV, p. 145.
- 497 *National Municipal Review*, Vol. I, p. 148.
- 498 *The American Political Science Review*, Vol. VIII, p. 454.
- 499 Upson's *The City Manager Charter of Dayton in The Annals of the American Academy of Political and Social Science: Commission Government and City Manager Plan*, p. 192.



## CHAPTER VI

500 See James's *The City Manager Plan, the Latest in American City Government* in *The American Political Science Review*, Vol. VIII, pp. 602 ff.

501 *The Coming of City Manager Plan* in the *National Municipal Review*, Vol. III, p. 45.

502 Foulke's *Evolution in City Charter Making* in the *National Municipal Review*, Vol. IV, pp. 20, 21.

503 *The Coming of City Manager Plan* in the *National Municipal Review*, Vol. III, pp. 46-48.

504 Toulmin's *The City Manager*, p. 4.

505 *Laws of New Mexico*, 1909, p. 240.

506 Bradford's *Commission Government in American Cities*, p. 107.

507 The position of city-manager in Roswell has since its creation been filled by W. M. Atkinson, an ex-mayor of Roswell and the chairman of the board of county commissioners. He is employed at a salary of \$1800 per year; but the peculiar feature is that he has the privilege of continuing his office as county commissioner and of attending to other public duties.—*The American City*, Vol. XII, pp. 502-503.

508 Holsinger's *General Manager Plan of Government of Staunton, Virginia*, p. 1.

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- 534 *Charter of the City of Dayton*, Secs. 3 and 9.
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- 536 Toulmin's *The City Manager*, p. 62.
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- 613 Although no provision is made in the law for the removal of the officials through the process of popular recall, the councilmen and manager are still subject to removal from the office by the district court in accordance with the general methods of removal of public officials in Iowa, especially by the Cosson Removal Law of 1909. See *Patton's Removal of Public Officials in Iowa* in the *Iowa Applied History Series*, Vol. II, No. 7.
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#### CHAPTER VII

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#### CHAPTER VIII

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640 Ford's *Principles of Municipal Organization* in *The Annals of the American Academy of Political and Social Science*, Vol. 23, p. 195.

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645 See *A Municipal Program: Report of a Committee of the National Municipal League*, adopted by the League, November 7, 1889, together with explanatory and other papers.

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- 647 Wilcox's *The Study of City Government*, p. 228.
- 648 Goodnow's *City Government in the United States*, p. 199.
- 649 Some of the typical claims of gains resulting from the adoption of the commission form may be found in Bruere's *The New City Government*, pp. 72-76.
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- 651 James's *Proportional Representation: A Fundamental or a Fad in the National Municipal Review*, Vol. V, p. 277.
- 652 The word "city" is here used to indicate a place having 2500 or over inhabitants.—See *Thirteenth Census of the United States*, Vol. I, pp. 97 ff.
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- 654 Dillon's *A Treatise on the Law of Municipal Corporation*, Vol. I, pp. 55, 56.
- 655 Taussig's *Principles of Economics*, Vol. II, p. 410.
- 656 McBain's *Evolution of Types of City Government in the National Municipal Review*, Vol. VI, pp. 29, 30.
- 657 Munro's *The Government of American Cities*, pp. 304-308.
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- 660 Munro's *The Government of American Cities*, p. 308.
- 661 Munro's *Principles and Methods of Municipal Administration*, p. 18.
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1. Establishment of the principle that the majority has no right to impose wasteful and incompetent government upon the minority—through the removal by Governor Hughes of Borough President Ahearn on evidence of incompetence and waste first furnished by the Bureau.
  2. Reorganization of the department of finance with notable improvements in its methods of inspection, audit, payment, collection, reports, etc.
  3. Accounting revision for all city departments with time sheets and service records as the basis for auditing payrolls.
  4. Budget reform, budget exhibits, budget publicity, budget conferences of social workers, clergymen, and taxpayers.
  5. Conversion of the commissioners of accounts office from a handicap to civic progress into a potent agent for efficiency and honesty.
  6. An increase of \$2,000,000 a year in revenues due to the organization of water collection methods.
  7. System and economy substituted for waste and chaos in the repairs and stores methods of the water department and in the purchasing and repair methods of the police department.

8. Establishment of a bureau of child hygiene in the department of health and the extension of its work for school children and infants.

9. Cessation of many slaughter house evils through more efficient inspection by the department of health.

10. Recovery of \$723,000 from street railway companies for paving done at public expense between the companies' rails, and suits pending for \$300,000.—Bruere's *The New City Government*, p. 101.

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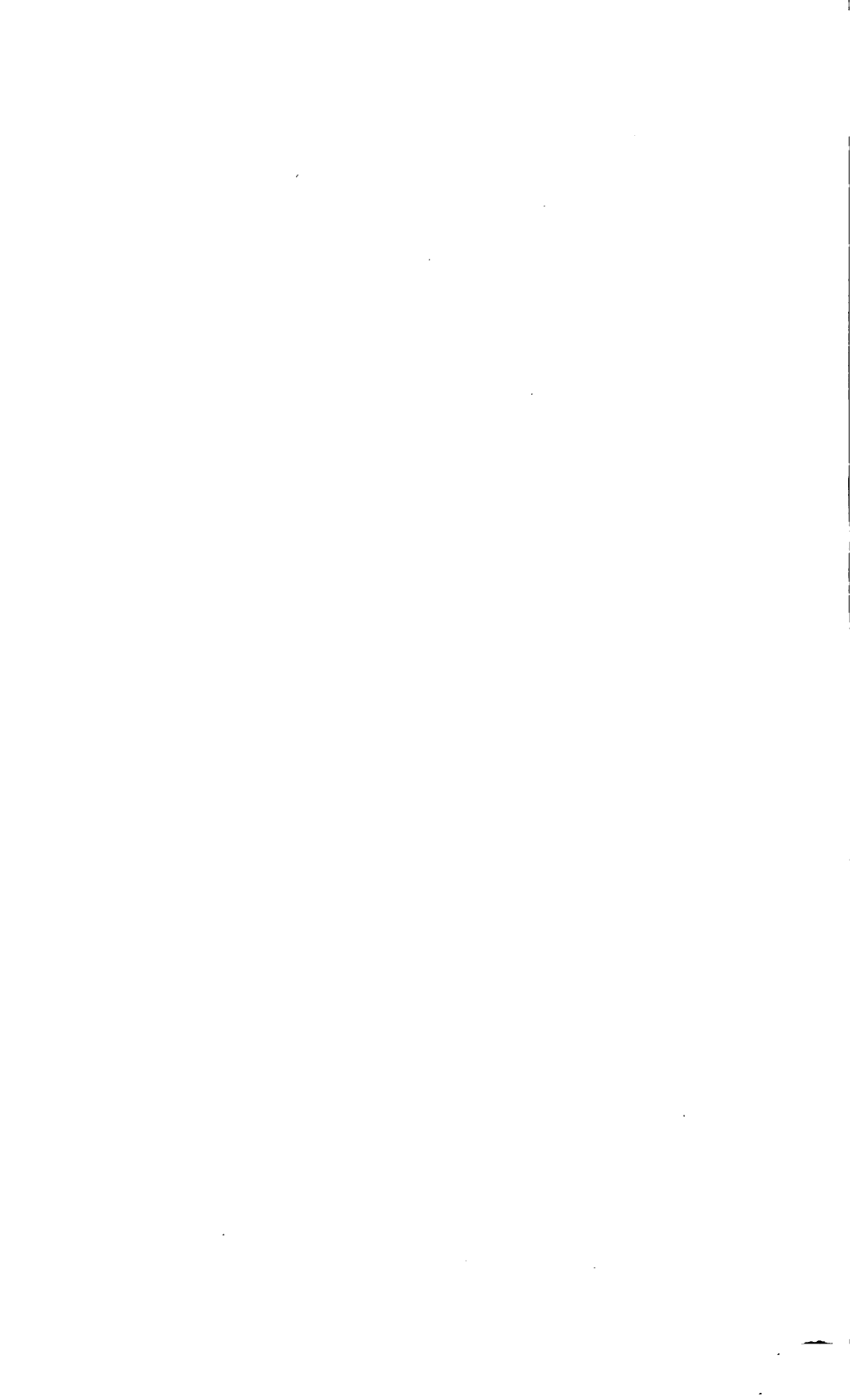
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